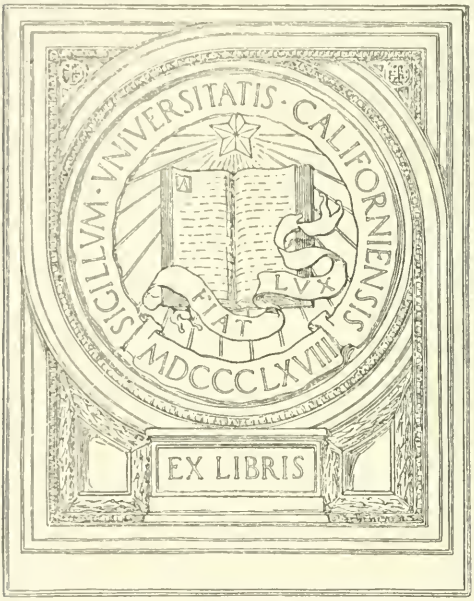
HISTORY OF TOWNSHIP GOVERNMENT IN IOWA

CLARENCE R. AURNER



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BY

CLARENCE RAY AURNER

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EDITOR'S INTRODUCTION

A LARGER interest in community development suggests that history may be studied from the bottom up, that historical research in the United States may very properly begin with the local community and proceed upward through the State and Nation.

Likewise in the study of American government the importance of the township is no longer ignored. Indeed, there is not only a widespread interest in local government but a general feeling that in the political readjustments of the future important changes will be effected in local administration. Since effective reform must follow the lines of actual experience and historical developments, a history of township government in Iowa may serve as a basis for applied politics in the redefinition of local government and administration which is pending.

Moreover, on the side of administration alone the township offers a field of study that is of more fundamental interest to the average citizen than that of any of the higher areas of political organization. Although it is true that the statutes of a Common-

wealth are indicative of the growth of its institutions, it is only when the application of the laws becomes a matter of record that the activities of the administrative agencies of the State may be satisfactorily studied and understood. Nor can the history of any Commonwealth be fully written until the origin, form, functions, development, and activities of its primary units of administration have been critically investigated.

Perhaps it is not too much to say that in this volume on the History of Township Government in Iowa, Dr. Aurner has made the most intensive study and the most critical analysis of the township thus far undertaken in the United States.

Benj. F. Shambaugh

Office of the Superintendent and Editor
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Iowa City Iowa

AUTHOR'S PREFACE

To discover the sources of the laws under which the township in Iowa was organized, to trace the changes in these township laws, to sketch the scope and character of township administration from its inception down to the present time, and to indicate some of the conceptions concerning the functions of the township that appear to have prevailed in Iowa, constitute the aim of the pages that follow.

In order to accomplish the objects of this research reference has necessarily been made to the original jurisdictions in which the township was first recognized as well as to those having an immediate connection with Iowa. Some reference has also been made to other jurisdictions in which a modified form of township organization has appeared. A survey of the laws from the establishment of the Territory of the Northwest in 1787 to the present time, in so far as they appear to relate directly to the history of local government in Iowa, has been undertaken; and incidentally the various types of township organization have been mentioned.

In the present study it seems necessary (1) to connect historically the township as established in Iowa with the primitive New England group forming an independent congregation where boundaries were not only indefinite

but decidedly irregular as contrasted with the regularity of the government survey; (2) to indicate the beginnings of the New York system in which the township governed by a selected body was superior to the county organization; (3) to point out the plan of Pennsylvania in which the township powers were very limited, the county being superior; and finally, to illustrate the mixed type of the western States. Again, the government survey of 1785 is recognized as determining the "geographic", or "congressional", or "original surveyed" township, which is fundamental in establishing all future limits in land description and is generally the basis of the civil township, with which the school township usually coincides. Each of these three kinds of townships — the civil township, the congressional township, and the school township — has a history of its own to which some reference is necessarily made.

In assembling the data from the various sources that only has been retained which appeared to have a direct bearing upon the subject. At the same time it has been necessary in some instances to make prominent mention of the county in order to make clearer the relation of the township to the higher units of government. The overlapping activities of these two administrative areas are such that a complete separation is both impracticable and undesirable.

It is from the original acts of legislative bodies and from the original records of local administrative agencies in Iowa that the greater part of the data for this study

has been secured. The citations in the *Notes and References* will indicate specifically the sources, which include chiefly the laws of the Territory of the Northwest, the statutes of Ohio and of the Territories of Michigan and Wisconsin, and the laws of Iowa from the organization of the Territory in 1838 to the present time. The county records in six of the earlier counties of Iowa have been examined; while secondary material has been used to some extent for illustrative purposes. Practically all of the sources, except local records, have been found in the library of The State Historical Society of Iowa.

It was at the suggestion of Dr. Benjamin F. Shambaugh, Superintendent of The State Historical Society of Iowa, that this research on the Iowa township was undertaken. For his personal direction and suggestions during the time occupied in research and for his critical reading and editing of the manuscript grateful acknowledgments are due. The index was compiled by Mr. Jacob Van der Zee.

Clarence Ray Aurner

The State Historical Society of Iowa
Iowa City Iowa

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PART I
ORIGIN AND DEVELOPMENT OF TOWNSHIP GOVERNMENT IN IOWA

I

THE MICHIGAN TERRITORY PERIOD 1834–1836

With the establishment of the townships of Julien in Dubuque County and of Flint Hill in Demoine County by an act of the Legislative Council of the Territory of Michigan in September, 1834, and with the location of the polls for the elections that were to be held in the following November, township government was first inaugurated within the boundaries of the present State of Iowa.[1] Moreover, the original townships of Julien and Flint Hill were, according to the provisions of the Michigan act, coëxtensive with the original counties of Dubuque and Demoine. The township elections were to be held "according to the mode prescribed by law for holding township elections"; while all laws then in force in Iowa County, Michigan Territory, and "not locally inapplicable", were "extended to the counties of Dubuque and Demoine" and declared to be in force therein.[2]

Thus, for the immediate origin of township government in Iowa one must turn to the statutes of the Territory of Michigan. Here one may gather from the acts of the Legislative Council for approximately seven years preceding 1834 the provisions of law relating to townships. It must be understood, however, that these acts were based generally upon earlier statutes (statutes of the original States) in so far as they were applicable to the conditions and needs of the Territory.

A general statute of the Territory of Michigan, enacted in 1827, declared that the inhabitants (meaning the electors) should assemble annually on the first Monday in April and choose such township officers as were provided for by the law; and in order that these elections might be conducted according to established rules such regulations were prescribed by the Legislative Council. It was further provided that the electors in any township meeting might adopt regulations relating to local matters, such as roads, partition fences, the control of stock running at large, enclosed grounds, and commons. These regulations were to become a part of the record of the township meeting, preserved according to law in a book kept for that purpose by the township clerk, and they were to remain in full force until "revoked or altered, or new made" at some subsequent meeting.[3]

The duties of the several township officers — the supervisor, the clerk, the assessors, the collector, the overseers of the poor, the commissioners of highways, the constables, the fence viewers, the pound masters, and the overseers of the highways, all chosen for one year — were specified in the Michigan act of March 30, 1827, which provided for the township meeting, and in laws governing the several departments of service to which such officers belonged. In later acts their functions may have been altered or possibly in some instances abandoned, the duties having been assigned to other offices already established. Then new offices were created as the demands of more complete organization appeared to make them necessary.

Since the county and township were identical in area during the Michigan period it is evident that the intention of the law was to place the government of both in the

hands of a single board. Moreover, records are available which indicate the actual organization of the two counties of Dubuque and Demoine under the laws of Michigan. The supervisors of the county of Demoine, Michigan Territory, convened at the house of William R. Ross in the town of Burlington on September 29, 1835. There were present, as constituting the board elected in the fall of 1834, Isaac Lefflfer, Francis Redding, and Ebenezer D. Ayers. Benjamin Tucker was appointed clerk after the board had "proceeded to business".[4] It is noted also that, either in the month of November, 1835, or previous to that time, W. W. Chapman brought from Galena, Illinois, the laws of Michigan — presumably under orders from the supervisors, since they allowed the bill of twenty-five dollars for the service.[5] In Dubuque County the records for 1835 do not appear; but in May, 1836, the proceedings are similar to those cited for the county of Demoine. Francis Gehon, William Smith, and John Paul constituted the first board of supervisors for Dubuque County, Michigan Territory, while Warner Lewis was the first clerk.[6]

The brief account of the period of the Territory of Michigan here presented indicates the provisions for and the beginnings of local government in Iowa. While this region was remote from the seat of Territorial government and while communication with the authorities under whom organization must be made was extremely difficult, the instructions of superiors appear to have been obeyed in some detail and the laws executed as provided in the statutes. Indeed, it may seem in some degree remarkable that provisions for the management and control of local affairs were so soon put into actual practice.

II

THE WISCONSIN TERRITORY PERIOD
1836–1838

On July 4, 1836, the original Territory of Wisconsin was organized. The Organic Act provided for the election by the people of all township officers, except those exercising judicial functions. The "rights, privileges, and immunities" granted to the Territory of Michigan and its inhabitants were, moreover, extended to the new Territory of Wisconsin; and in so far as they were applicable, the laws of Michigan were likewise declared to be in force in the new Territory.[7]

Of the acts of the Territorial legislature of Wisconsin relative to townships the first appears to be a statute providing for the amendment of several laws of the Territory of Michigan which had been approved in 1833 and which were still in force in the Territory of Wisconsin. In this amendatory act, approved on December 6, 1836, it was declared that "each county within this territory now organized or that may be hereafter organized" should constitute one township for the purposes of carrying into effect the provisions of the amended laws. Furthermore, it was provided that at the annual town meeting in each county there should be chosen by the electors three supervisors who should perform the "duties heretofore performed by the township board", in addition to those "assigned them as a county board", and in each county there should be chosen also one town-

ship clerk who, in addition to the duties heretofore assigned to that officer, should act likewise as "clerk to the board of supervisors".[8]

In accordance with the act of the legislature of Wisconsin Territory, approved on December 7, 1836, whereby the original county of Demoine was subdivided, the several divisions were required to organize under a board of supervisors, which should act in both county and township affairs; but a township clerk was provided as mentioned in the law approved on December 6, 1836. Accordingly, it appears from the local records that in the county of Lee the voters elected on Monday, April 3, 1837, three supervisors, three commissioners of highways, three assessors, one county treasurer, one coroner, one collector, one register, one township clerk, and thirteen constables. One John H. Lines having been chosen to the office of township clerk in the county was required to act also as the clerk of the board of supervisors. The local records contain the names of all the local officials, with the exception of the constables. Those who, in addition to the clerk, may properly be regarded as township officers under the Wisconsin law were the commissioners of highways, the assessors, the collector, and the constables. Moreover, in the allowances made for his services, John H. Lines was named as township clerk for the entire county.[9]

It was on December 20, 1837, that the Territorial legislature of Wisconsin provided for the election of three county commissioners in each county. By the provisions of this law it was required that at the first meeting of the commissioners the board of supervisors previously existing should deliver to them all of the records "of whatever nature" belonging to the county.[10]

But no mention is made of the township duties which were previously performed by the three supervisors. Moreover, it is distinctly stated that the board of commissioners, which was to be considered "a body corporate and politic", was organized for transacting county business.[11] Closely following this legislation was the act of January 2, 1838, providing for the establishment of thirty-five townships in the counties of Milwaukee, Brown, and Racine — all within the limits of the present State of Wisconsin.[12] At the same time another act, approved on January 3, 1838, provided for the election of constables and road supervisors and the appointment of justices of the peace.

This law contained a provision that upon the presentation of the required petition — that is, of a majority of the qualified voters in any township — it might be "set off" or changed. If a new township was established the commissioners were directed to order an election therein.[13] This provision was continued after the organization of the Territory of Iowa in July, 1838, when, according to the Organic Act, the existing laws of the Territory of Wisconsin were extended over the new Territory and its citizens were granted "all the rights, privileges, and immunities" theretofore belonging to the citizens of Wisconsin Territory. Thus, all laws relative to townships effective in the original Territory of Wisconsin remained in force in the Territory of Iowa until changed by act of the Legislative Assembly.

Thus, during the period when the Iowa country was under the jurisdiction of the original Territory of Wisconsin the civil township and the county were continued as identical in area in the district lying west of the Mis-

sissippi River. Counties, nevertheless, were subdivided, and it appears that a preliminary form of township government was authorized. No records are available, however, to suggest any formation of townships based upon the congressional survey of thirty-six square miles: the movement for such organization began almost immediately after the establishment of the Territory of Iowa in 1838.

III

THE IOWA TERRITORY PERIOD
1838–1846

The Organic Act of the Territory of Iowa, which was approved on June 12, 1838, provided that all township officers should be elected by the people "in such manner as is now prescribed by the laws of the Territory of Wisconsin, or as may, after the first election, be provided by the Governor and Legislative Assembly of Iowa Territory." Under this provision the first move for local legislation was made by Governor Robert Lucas, who in his message of November 12, 1838, said:

> The subject of providing by law for the organization of townships, the election of township officers, and defining their powers and duties, I consider to be of the first importance and almost indispensable in the local organization of the Government. Without proper township regulations it will be extremely difficult, if not impracticable, to establish a regular school system. In most of the States where a common school system has been established by law, the trustees of townships are important agents in executing the provisions of the laws.

The Governor further observed that while the laws of Wisconsin were, until changed by the legislature, in force in the Territory of Iowa in accordance with the Organic Act, "their incompatibility in many respects" with that act and the confusion into which they were thrown by "being blended with the laws of Michigan" made it advisable to proceed to organize the local government in conformity to the Organic Act. He therefore advised

legislation suitable to the local situation without reference to the laws of either Wisconsin or Michigan.[14]

On December 10, 1838, the House of Representatives resolved itself into a committee of the whole for the consideration of a bill to provide for the incorporation of townships. After some time spent in amending the bill the House concurred in the report.[15] Later when the Council came to the consideration of this bill on December 13th, and again on December 14th, it was referred to the Committee on Territorial Affairs. The committee reported on December 18th, when the Council in committee of the whole concurred. Finally, however, the bill was postponed indefinitely on December 28th, by a vote of eight to three.[16]

In November, 1839, in his second annual message Governor Robert Lucas wrote the following:

> I will again call your attention to the importance of providing by law for the organization of townships. Such an organization was doubtless contemplated by Congress, when they declared in the organic law, that all township officers should be elected by the people. The organization of townships are [is] so intimately connected with every well regulated system of common schools, as well as that of public roads, that neither system can be conveniently carried out in detail, without such organization. Further, it has been proven by experience, that the ordinary local business of the country can be done with much more convenience and less expensive to the people, where the township system has been adopted, than in communities where it has been dispensed with. I, therefore, earnestly press upon your consideration, the importance of passing a law the present session, to provide for the civil organization of townships, and that provision be made for the election by the people, of a competent number of Justices of the Peace, in such organized townships, as well as other township officers.[17]

It was ordered by the House, on November 7, 1839, that "so much of the Governor's message as relates to the organization of townships be referred to the committee on townships and county boundaries." A bill from this committee was reported on Monday, November 11, 1839, as "No. 1, H. R. file", bearing the title of "A bill for the incorporation of townships, and for other purposes." It was read a second time on November 12th, and was then referred "to committee of the whole House" and made the order of the day for the following Thursday. It was taken up as provided, and "after some time, the committee rose". The bill was then reported without amendment; whereupon it was referred to a select committee consisting of one member from each electoral district. On November 16th this committee reported the bill with amendments. Mr. Langworthy moved to reject it and voted in the affirmative as against twenty-five negative votes. Again, on November 18th the House in committee of the whole amended the proposed act; and on November 22, 1839, it was read a third time, passed, and the title agreed to, and the clerk was ordered to notify the Council of such action.

In the Council the bill was finally referred to the Committee on Judiciary, and with amendments was passed on December 31, 1839. It may be noted that the final amendment made by the Council after the bill was reported from the committee related to the title, wherein the word "incorporation" was changed to "organization". Upon its return to the House on December 31st the amendments were, in part, at first rejected. Later, however, this action was reconsidered and on January 4, 1840, the act was sent over to the Council for signature. Its approval by the Governor followed on January 10, 1840. This in

brief is the legislative history of the bill relating to townships as passed at the second session of the Legislative Assembly.[18]

By comparing the first law relative to townships, enacted by the Legislative Assembly of Iowa at its second session, with a law of Ohio, approved on January 21, 1804, and revised in 1805, it seems quite certain that the statutes of the latter State were in the possession of the lawmakers of the Territory. The following sections of these laws may be cited as illustrations of the similarity:

DUTIES OF THE TOWNSHIP CLERK

The Ohio Statute

Sec. 5. *And be it further enacted,* That it shall be the duty of the township clerk, to keep fair and accurate records of all the public transactions of the township meetings, to make out within two days after the election of township officers, a list of all those of whom, by law, oaths are required, stating the offices to which they are respectfully [sic] chosen, and the same deliver to a constable of the township, requiring such constable forthwith to summon such officers to appear before a justice of the peace, or before such clerk, within ten days, to take such oaths or affirmations as may be by law required, which oaths or af-

The Iowa Statute

Sec. 9. That it shall be the duty of the township clerk to keep fair and accurate records of all the public transactions of the township meetings, to make out, within two days after the election of township officers, a list of all those of whom by law oaths are required, stating the offices to which they are respectively chosen, and the same deliver to a constable of the township, requiring such constable forthwith to summon such officers to appear before a justice of the peace or before such clerk within ten days, to take such oaths or affirmations as may be by law required, which oaths or affirmations the said clerk is authorized to administer, and

firmations the said clerk is authorized to administer, and of which he shall make a record; and in case any township officer shall take the oath of office before any justice of the peace, such justice shall file a certificate thereof with the clerk of the township, who shall make a record of the same.

Sec. 6. *And be it further enacted,* That it shall be the further duty of the township clerk, to record in a book to be provided by him for that purpose, all private roads and cart-ways, by the trustees established, together with the ear-marks of all cattle, sheep and hogs, and such other marks and brands as any person may wish to have recorded in the said township, but he shall not record the same mark to two different persons; and the said clerk shall be entitled to receive of the person employing him as aforesaid, for such entry of marks or brands, the sum of twenty-five cents, and shall deliver a certified copy of such entry to the owner, if required, and he shall be entitled to receive for recording private roads and cart-

of which he shall make a record; and in case any township officer shall take the oath of office before any justice of the peace, such justice shall file a certificate thereof with the clerk of the township, who shall make a record of the same.

Sec. 10. That it shall be the further duty of the township clerk to record in a book to be provided by him for that purpose, all private roads and cartways by the trustees established, together with the ear marks of all cattle, sheep, and hogs, and such other marks and brands as any person may wish to have recorded in the said township, but he shall not record the same mark to two different persons. And the said clerk shall be entitled to receive of the person employing him as aforesaid, for such entry of marks or brands, the sum of twenty-five cents, and shall deliver a certified copy of such entry to the owner, if required, and he shall be entitled to receive for recording private roads and cartways, for every sheet of one hundred

ways, for every sheet of one hundred words, nine cents, payable by the person at whose request the said record is to be made.— From *Acts of the State of Ohio,* First Session, Third General Assembly, 1804–1805, pp. 364, 365.

words, ten cents, payable by the person at whose request the said record is to be made. — From *Laws of the Territory of Iowa,* 1839–1840, p. 48.

DUTIES OF THE TOWNSHIP TRUSTEES

Sec. 7. *And be it further enacted,* That it shall be the duty of the trustees, within twenty days after each annual township meeting, to divide their respective townships into districts, allotting to each supervisor one, and it shall be the further duty of the said trustees, to settle the accounts of the supervisors of high-ways and overseers of the poor, and to examine and settle all accounts and demands against the township, for which purpose the said trustees, supervisors, overseers of the poor and township clerk, shall meet on the first Monday of March, annually, at the place of holding the township meetings, and it shall be the duty of the township clerk to make an entry and true statement of all accounts allowed and adjusted by the trustees, in a book to be

Sec. 11. That it shall be the duty of the trustees, within twenty days after each annual township meeting, to divide their respective townships into districts, allotting to each supervisor one district, and it shall be the further duty of the said trustees to settle the accounts of the supervisors of highways and overseers of the poor, and to examine and settle all accounts and demands against the township; for which purpose the said trustees, supervisors, overseers of the poor, and township clerk shall meet on the first Monday of March annually, at the place of holding the township meetings; and it shall be the duty of the township clerk to make an entry and true statement of all accounts allowed and adjusted by the trustees, in a book to be provided for that purpose;

provided for that purpose, and for every demand against the township, allowed by the trustees, the creditor shall be entitled to receive from the said trustees, an order on the township treasurer for the full amount thereof, payable on demand.— From *Acts of the State of Ohio,* First Session, Third General Assembly, 1804–1805, p. 365.

and for every demand against the township, allowed by the trustees, the creditor shall be entitled to receive from the said trustees an order on the township treasurer for the full amount thereof on demand.— From *Laws of the Territory of Iowa,* 1839–1840, pp. 48, 49.

The following sections provide for the summoning of electors to the town meeting and for certain proceedings preliminary thereto:

The Ohio Statute

Sec. 9. *And be it further enacted,* That at least twenty days before the annual township meeting, the trustees shall issue their warrant to a constable of the township, directing him to notify the electors of such township to assemble at the time and place appointed for their annual meeting, and said warrants shall enumerate the officers to be chosen at such meeting; and on the application of two or more freeholders of the township for that purpose, said trustees shall insert in said warrant such other business, matter or thing, as may be proposed to

The Iowa Statute

Sec. 13. That at least twenty days before the annual township meeting, the trustees shall issue their warrant to a constable of the township directing him to notify the electors of such township to assemble at the time and place appointed for their annual meeting; and said warrants shall enumerate the officers to be chosen at such meeting, and on the application of two or more freeholders of the township for that purpose, said trustees shall insert in said warrant such other business, matter or thing as may be proposed to be submitted to said

be submitted to said township meeting; and no tax shall be voted at such township meeting, unless notice thereof shall have been given in the said warrant, and the constable who shall receive such warrant, shall warn the electors of such township by setting up copies of said warrant in three of the most public places in each township, at least fifteen days before the meeting of such electors.— From *Acts of the State of Ohio,* First Session, Third General Assembly, 1804–1805, pp. 366, 367.

township meeting; and no tax shall be voted at such township meeting unless notice thereof shall have been given in the said warrant; and the constable who shall receive such warrant, shall warn the electors of such township by setting up copies of said warrant in three of the most public places in each township, at least fifteen days before the meeting of such electors.— From *Laws of the Territory of Iowa,* 1839–1840, p. 49.

Certain sections make provision for the filling of vacancies as follows:

The Ohio Statute

Sec. 12. *And be it further enacted,* That when by reason of non-acceptance, death or removal, of any person chosen to an office, in any township, at the annual meeting as aforesaid, or in any case where there is a vacancy, the trustees shall fill such vacancy, and the person thus chosen shall take the same oaths and be liable to the same penalties as though he had been chosen at the annual meetings; and in case there should not, at any annual

The Iowa Statute

Sec. 16. That when by reason of non-acceptance, death or removal of any person chosen to an office in any township at the annual meeting as aforesaid, or in any case where there is a vacancy, the trustees shall fill such vacancy; and the person thus chosen shall take the same oaths, and be liable to the same penalties as though he had been chosen at the annual meetings; and in case there should not, at any annual meeting under this act,

meeting under this act, be a sufficient number of electors assembled for the choice of a chairman, as is herein before provided, between the hours of ten o'clock in the morning and four in the afternoon, so that no township officers can be chosen by the electors, it shall then be the duty of the trustees to appoint all township officers in this law enumerated; and the township officers thus appointed, shall take the same oaths and be liable to the same penalties, as though they had been elected at the annual meeting.— From *Acts of the State of Ohio,* First Session, Third General Assembly, 1804–1805, p. 368.

be a sufficient number of electors assembled for the choice of a chairman as is hereinbefore provided, between the hours of ten o'clock in the morning and four in the afternoon, so that no township officers can be chosen by the electors, it shall then be the duty of the trustees to appoint all township officers in this law enumerated; and the township officers thus appointed shall take the same oaths and be liable to the same penalties as though they had been elected at the annual meeting.— From *Laws of the Territory of Iowa,* 1839–1840, p. 50.

That the statutes of Ohio, as well as those of other States, were available at the time is evidenced (1) by the communication of the Territorial Secretary in reply to a resolution of the Council, (2) by the catalog of the first Territorial library, and (3) by the list of works in the private library of Governor Lucas. Copies of Chase's *Statutes of Ohio* were in the Territorial library and also in the possession of the Governor.[19] Thus the evidence is reasonably conclusive that the township act of 1840 was copied from the statutes of Ohio.

By the law approved on January 10, 1840, relative to the organization of townships it was provided that whenever the board of county commissioners deemed it ex-

pedient they should submit the question of the adoption of a township organization by the county to the qualified electors therein. Should the vote then taken be favorable, the commissioners were authorized to proceed with the organization in accordance with the act wherein it was specified that the "shape and size" of the township should be as the convenience and interest of the county would seem to demand. The act made provision also for the naming of the township according to the preferences of the inhabitants thereof, and declared that the first place of meeting for the election of officers should be designated by the commissioners.

On the first Monday in April after the establishment of the township, and annually thereafter, the electors were required to assemble at the place assigned by the commissioners, or as the trustees should determine after the first election, and proceed to the choice of "one township clerk, three trustees, two overseers of the poor, two fence viewers, a sufficient number of supervisors of highways, two constables, and one township treasurer"— all of whom should continue in office until their successors should be chosen and qualified. For these several officers no qualifications appear to have been required beyond those of a qualified elector. The persons chosen were required, however, to present themselves within ten days either before the clerk or a justice of the peace and subscribe to the usual oath or affirmation.

The annual township meeting might consider other business in addition to the election of the township officers, provided any two freeholders had made the proper request previous to the call which was made on the authority of the trustees. Should a tax be proposed it must be duly stated in the notice fifteen days before the

date of the meeting. Officers chosen at any annual meeting but refusing to accept and qualify for such duty as the law provided were subject to a fine of three dollars, the same to be applied to the improvement of the highways within the township. No elector, however, could be required to serve two years successively in the same office.

It was within the powers of the county commissioners to divide or alter the boundaries of townships whenever in their judgment it was "conducive to the public convenience", but the alteration or division must not reduce any township below the size of "six miles square", unless it included an incorporated town. Again, the inhabitants of any township desirous of being "set off" were authorized to petition the board of commissioners; whereupon it became their duty to order the change and to name the township.[20]

As amendatory to the law of 1840 provision was made in 1841 that the commissioners in the counties not yet divided into townships, or in which there had been no election authorizing such a division, might proceed to divide the county into townships when in their opinion the people of the county desired such local organizations.[21]

In 1842 townships then organized, or to be organized, were declared to be bodies "politic and corporate, capable of suing and being sued"— a status which had not been accorded to them under previous acts. Moreover, the treasurer of the township was now required to give bond with security to the trustees, while the forfeiture for failure to qualify after election to any township office was reduced to two dollars. And the trustees, by virtue of their office, were made the judges of all general and special elections within their respective townships. Here

again the similarity of certain sections of the Iowa statute to those of an Ohio statute, approved in 1820, may be clearly seen.[22]

The Ohio Statute

Sec. 14. That each and every person elected and qualified for the office of township treasurer, shall, previous to entering on the duties of his office, give bond with approved security, to the trustees of such township and their successors in office, in such sum as the trustees may deem proper, conditioned for the faithful receiving and paying over all moneys, which may come into his hands for the use of the township, which bond shall be lodged with the clerk of the township; and if the said bond shall become forfeited, the township clerk, by order of the trustees, is hereby authorized to sue for and collect the same, for the use of the township.—From Chase's *Statutes of Ohio,* Vol. II, p. 1089.

The Iowa Statute

Sec. 9. That every person elected to the office of township treasurer, shall previous to entering on the duties of his office, give bond with security to the trustees of such township, and their successors in office, in such sum as the trustees may deem proper, conditioned for the faithful performance of his duty in receiving and paying over all moneys which may come into his hands for the use of the township, which bond shall be lodged with the clerk of the township, and if the said bond shall become forfeited, the township clerk by order of the trustees, is hereby authorized to proceed in a summary manner by motion in the district court, to recover and collect the same for the use of the township or an other person or party entitled to the same.—From *Laws of the Territory of Iowa,* 1841–1842, p. 99.

By an act approved on June 5, 1845, the law of 1842 providing for the organization of townships was amended not only by making the trustees the judges of election but also by giving them certain powers of appointment. In

addition they became by virtue of their office overseers of the poor and fence viewers, while the township clerk was authorized to act as one of the clerks of the election. The provisions of this amendatory act have to do chiefly with township elections and township roads.[23]

The final act of the Iowa Territorial legislature relative to townships was special, applying only to the county of Dubuque. It provided that at the April election of 1846 in Dubuque County opportunity might be given for an expression on the part of the electors for and against township organization. Furthermore, it was stated in the act that the judges of election should "interrogate each qualified elector" of the county as to whether he was in favor of or against such organization.[24] The records of Dubuque County, however, do not appear to contain any returns of the vote taken under this law, which provided that the judges of election should "certify the number of votes received for and against township organization, and shall transmit the same to the clerk of the board of county commissioners, whose duty it shall be to examine, as other election returns, and publish the number of votes, for and against such organization in a newspaper in the county of Dubuque". Since, however, the township organization was continued and practically completed in that county before 1849, one may conclude that the vote was not against township organization. Nor is there any mention in the records of the county commissioners of Dubuque County that the question was even submitted to the voters in April, 1846, notwithstanding the law provided that a poll should be opened for the purpose of receiving such a vote.

IV

THE PERIOD OF THE COMMONWEALTH
1846–1914

The Constitution of 1846 provided in Article XIII that all laws then in force in the Territory should so continue until they expired through their own limitations or were altered by the General Assembly of the State. Consequently the laws passed by the Legislative Assembly relative to townships or officers therein remained in effect until January, 1847, when the law of 1842 was amended. It was then declared that the county commissioners need not delay the establishment and organization of townships until they had secured an expression of opinion from the electors, nor indeed for any unnecessary reason; but they should proceed "as early as practicable" to divide their counties into townships. This applied not only to all counties then organized and up to that time not divided into townships, but also to counties attached for election and judicial purposes to counties already organized, thus requiring, it appears, the organization of townships throughout the State. Moreover, the usual elections were to be called at places named by the county commissioners.[25]

A special act of 1847, establishing a precinct in Farmington Township, Van Buren County, contained more than ordinary provisions governing such cases, since it provided for the election of two additional trustees for the precinct, which in this instance was a subdivision of a

township. These trustees were to be chosen annually and to be governed by all the regulations and penalties found in the law relating to the trustees of the township. This act, it appears, authorized the election of five trustees in a single township as then organized.[26]

Again, in 1848 the General Assembly passed a special act establishing Lake Prairie Township in Marion County, naming in the act the "house of H. P. Scholte in said township" as the polling place for an election which was to occur in the following April. This law is of special interest since it was passed in response to a petition from the body of settlers who had recently arrived from Holland, and who had located upon lands in Marion County. Moreover, by this same act they were granted power to organize a township government before they had obtained the full rights of American citizens. It is certain also from the results of the election held in April, 1848, that these people elected the officers provided for by the act of the Territorial legislature of 1842 instead of those provided for in the later act of 1845, since in the act of 1845 the trustees were made fence viewers and overseers of the poor.[27]

All laws relating to township organization so far as they applied to Scott County were repealed in 1849. There was a provision, however, that the electors might determine by ballot whether such organization should be retained. By this authority the county might vote to return to the precinct system; and if such a vote should result in the change to precincts "the boundaries of said townships" should remain "as the boundaries of election precincts". Furthermore, school officers chosen at previous township elections were to be considered in all respects as school officers of the precincts which should

take the place of townships.[28] On this question there appears to be no account of a vote in the records of the county.

In Scott County, moreover, the organization of the townships in the beginning does not appear to be the same as in other counties. Whether one should date the township organization from the time the precincts were described and the boundaries recorded or from the record made in the year that Iowa became a State may be determined best, perhaps, by the functions of officials as found in the several precincts. It appears further that the proceedings of the commissioners with reference to the precincts were similar to what occurred with reference to townships when organized. This final resolution of the commissioners declares "that the township lines as now [January 9, 1846] organized by this board remain the same as the precinct lines heretofore established except the township of Rockingham." The north line of the "township" of Rockingham as named here was slightly modified. Strictly it was a "precinct" and not a "township" until the order was passed. It is noticeable, however, that "township" is often used in referring to "precincts"; and in the records of Scott County it appears that from the beginning precincts were known by names and never by number.[29]

The Code of Iowa which was approved on February 5, 1851, contains very little to suggest the details of the earlier legislation relative to townships and their organization; but a careful examination of its provisions reveals the fact that the general features of the earlier laws were preserved. The "county court", soon to consist of one individual, presiding as county judge, was required to exercise control over the establishment of

townships — the boundaries of which should conform whenever practicable to the congressional township lines.[30]

Upon the organization of counties in the western part of the State in 1853 each county constituted at the same time a single township. For instance, Cass County was composed of one township during its temporary organization, Audubon of one, and Adair of one — these three together, as the law states, constituting the county of Cass for election, revenue, and judicial purposes. The same provision was made for Montgomery and Union counties, which were attached to Adams County. Again, it appears that two precincts were formed in the county of Shelby to which Crawford and Carroll were attached for election, revenue, and judicial purposes. In sparsely settled sections of the northwestern part of the State the same plan was followed with larger groups of counties.[31]

A special act provided in 1860 for the attachment of Van Buren Township in Lee County to three other townships "for judicial purposes", thus repeating the custom of the national government in uniting Territories for the purposes of temporary government or of the Territorial governments in uniting counties. This appears to be a natural arrangement resulting from the mode of settling the Territory.[32] Furthermore, the civil township authorities were required in certain emergencies to assume the duties of officers of other jurisdictions. When a township was set off as a school district or when a district was left without any officers, for instance, the trustees of the civil organization were required to call a meeting for the necessary election.[33]

With the change in county government which followed the breakdown of the county judge system the

principle of township representation in the county board of supervisors appears. But in this connection it should be observed that the name "supervisor" as used under the jurisdictions of Michigan and Wisconsin does not signify the same duties in township affairs as is implied when the term is used in later laws.

By an act which became effective on July 4, 1860, each township was required to elect one supervisor at the election next following. These several supervisors, coming into office on January 1, 1861, formed the county board. And this was, indeed, the fourth system of county government experienced in some of the earlier counties during a period of twenty-five years. Under this plan, which was not new, each township of four thousand population or less was entitled to one supervisor, and for a fraction of four thousand additional population up to eight thousand another member of the county board, with one member for each four thousand thereafter. The county board, therefore, depended for its membership (1) upon the number of townships in the county and (2) upon the population of these several election districts.[34]

In 1862 authority was conferred upon the county board of supervisors — which from January 1, 1861, to the present time has existed under that title — to create within any township two or more election precincts provided there had been cast at the last general election more than one thousand votes. The necessary record in this proceeding corresponded very closely to that for township organization as described in previous laws. Under the precinct system, however, the township officers did not cease to control the returns of all elections within the township. The act merely limited the voting areas and provided for a larger number of election officials.[35]

According to the legislation of 1862 a township must contain at least ten legal voters before a separate organization was permitted, but each county should contain at least one civil township. If the county included but one township three supervisors were provided for; and when only two townships were possible one member of the county board should be chosen at large.[36] This was the number of members provided for in the original organization of townships in the Iowa country under the statutes of the Territories of Michigan and Wisconsin. Further authority was granted under an act of 1862 whereby the electors of an organized township were permitted to present a petition for a change of the township name, and the county board was required to hear arguments for and against such a proposal. This appears to have been true also in regard to the division of townships and the adjustment of boundaries.[37]

It was not until 1866 that townships were declared to be health districts, wherein the expenses incident to the enforcement of laws relating to public health were to be collected as other taxes. The general powers which were conferred upon the local board of health are discussed below under the heading of the township trustees, who composed this body (see page 66), and also in connection with the township clerk, who was charged with the care of the funds (see page 82). With slight changes this law was incorporated in the *Code of 1873*. Additional authority was given to the local board of health in 1892 regarding the enforcement of quarantine laws, and again in 1906 with reference to the care of persons affected with contagious diseases. In the act of 1906 provision was made for the apportionment of the costs in such cases, whereby the township bore but one-third of the

expense, which was assessable only after review and allowance by the county board.[38]

The power to levy taxes in aid of railroad construction was conferred upon the township authorities in 1868. On the presentation of a petition from not less than one-third of the resident taxpayers in the township the question must be submitted to a vote of the electors. An affirmative vote on the question left no alternative to the trustees concerned: the law required them to act in the premises and to arrange the proposed levy.[39] The legislation of 1868 was, indeed, the beginning of a series of acts upon the subject.

In 1872 the township collector or county treasurer was prohibited from collecting any tax voted in aid of railroads in accordance with the previous act of the Thirteenth General Assembly, which had reënacted the law of the Twelfth General Assembly but limited the levy to five per cent of the taxable valuation, provided such collection was in any respect contrary to the express agreements that had been made. In other words, the law made it perfectly clear that no railroad company could expect to collect any tax levied in its aid until the township officials certified to the fact that all special requirements on the part of such a corporation had been fully met. Furthermore, the taxpayers within the township must have sixty days notice after all conditions of the contract had been complied with. Then, in the same year, the entire law governing the levying of taxes in the aid of railroads was repealed.[40] Again the subject was revived by an act permitting the transfer to another company of a tax levied in a township where it had been properly voted and not disposed of according to the contract through non-compliance on the part of the cor-

poration for whose aid it was originally intended. A petition of one-third of the taxpayers was again necessary, and an affirmative vote gave authority to the officials to act.[41]

In 1874 all taxes assessed in townships in aid of railroads were ordered to be cancelled when four years had elapsed from the time of the levy; and when work had not been begun in good faith they were to be deemed as forfeited. While all legitimate claims were still binding upon the townships, provisions in the act relieved the local authorities from enforcing any and every collection for aid not strictly in accordance with the agreement and the fulfillment.[42] Nevertheless, another revival of the law granting permission to townships to levy such taxes appears in 1876, but accompanied by certain features which aimed at the protection of the taxpayer. The proceedings were not different; but the petition now required a majority, and the vote in favor of taxation must include two-thirds of the electors. Provisions of a general nature made the law still more stringent upon the local organization than any previous law on the subject.[43]

Certain taxes in aid of railroads voted in townships between the dates of January 1, 1868, and January 1, 1875, were by an act of 1878 ordered cancelled in any instance where the road aided had not been built as anticipated.[44] It was but two days after this law had been approved that the law of 1876 providing for a two-thirds vote to carry a proposition for taxation to aid railroad construction through any township was amended by changing the "two-thirds" to a "majority".[45] This illustrates the easy method of securing changes in what appears to be a minor matter. When, however, the public again, in 1880, demanded the protection of the statutes

it was apparently conceded in the substantial reënactment of the law of 1874. The act of 1880 required the cancellation of all such taxes when work had not been begun within two years in the township, or in any instance where the time was not specified. Furthermore, to secure any tax in the future actual work must commence within six months from the time of the levy.[46]

A comprehensive act relating to taxes in aid of railroads, which repealed all previous laws, was approved on April 5, 1884. This new legislation, under which townships might vote aid to railroads including provisions found in previous laws protecting the taxpayer, with an additional feature whereby an equivalent value was required from all corporations in the form of "stock" for the amount of tax paid. Again cancellation was the penalty for failure to comply with the conditions of the contract within one year; and specific provisions required the costs of all elections upon the question of taxation in aid of such corporations to be paid by the company concerned. In 1902 an amendment to this law, which had been retained in the *Code of 1897,* was found necessary on account of the construction of trolley or electric railways. The act empowers townships to vote aid to such corporations, and all of its provisions apply to these forms of transportation.[47]

Another form of township aid to public enterprises, under specified conditions, is found in a law of 1882. It was possible under that act for townships to vote aid in the construction of bridges, the estimated cost of which was not less than ten thousand dollars. Here, again, a majority of the "resident property taxpayers" were required to present a petition for the submission of the question to the township electors. Thereafter a majority

vote was required for approving the levy, which could not be greater than five per cent as in the case of railroads. Furthermore, such levy must not exceed one-half the estimated cost of the structure, and the taxpayers were authorized to specify in their petition the conditions upon which the county board might order payment of any money so voted in the township.[48]

In 1896 provision was made for another special township tax. A majority petition might secure a vote upon the question, "Shall a tax be levied for a public hall?". An affirmative vote made such a tax collectible in the usual manner up to "three mills on the dollar", and when collected it was payable to the township clerk and by him applied in payment for the construction on orders from the township trustees, who by virtue of the act became the building committee. It was provided also that the location should be such that the greatest number of taxpayers might be accommodated. Again, an annual tax of not to exceed one-half mill in any year was permitted for the equipment and maintenance of such a building.[49]

An act approved on April 5, 1906, is the most recent legislation providing for a special township tax. This statute relates to the power of the township to contract with the trustees of "any free public library" for the use of the same on terms equivalent to those granted to citizens within any corporation possessing such an institution. In such cases a petition signed by a majority of the resident freeholders was necessary. Thereafter a tax of one mill as a maximum might be levied — the proceeds to be known as a "library fund" and to be used for no other purpose. It may be noted in this connection that such action required no vote, only a majority petition.

An amendment, however, has so changed this law that a petition is no longer necessary.[50]

Again at the session of the General Assembly beginning on January 8, 1906, civil townships were authorized to receive gifts in the form of "money or property for the purpose of establishing and maintaining libraries, township halls, cemeteries, or for any other public purpose." In order to make such gifts or bequest effectual it becomes necessary for the township trustees to accept the same by a proper resolution, which it is assumed is to become a part of the record, although this provision is not a part of the act.[51]

Among the statutory provisions relative to townships which appear in the laws of 1868 there is found a clause providing for a "board of registry", consisting of the township trustees and the clerk. According to the requirements of the act this "board of registry" must assemble annually at the office of the township clerk on the first Monday in September "for the purpose of making a list of all qualified electors" in the township. The law required the assessor to furnish such information as they were supposed to need, or they must obtain it from the poll books used in previous elections. A second session of this board was required previous to the general election for the purpose of revising the lists. Some convenient point must be selected; and the members were required to remain in session until all due corrections were made.

It appears, also, that the registry board had full power to determine the suffrage rights of all township electors; and they were specifically enjoined to perform such acts as were necessary to insure a fair vote in all elections, general or special. In fact the law deals chiefly with

elections, the controlling factor in the township being the registry board. For services in this capacity the members were allowed compensation equivalent to that of judges of election.[52] Again when new townships were formed the board of registry of the township from which the new territory was taken was required to furnish a list of the registered legal voters to the judges of election in the new township. The *Code of 1873,* however, provided that the law referred to should become applicable only in townships having six thousand or more population.[53]

Another provision, relating to the election of road supervisors and assessors appeared in 1878, when the law required the separate ballot boxes for each road district to be numbered; and the voter was required to place his ballot in the box which corresponded with his place of residence. In a similar manner the assessors in an incorporated town and in the township lying without its limits were to be elected.[54]

The change to biennial elections in 1906 required an amendment to the law relative to the election of township trustees. Since their term of office expired at different times according to the law of 1878, the act of 1906 provided for their election for two years in 1908 and every two years thereafter.[55] It appears, furthermore, that the usual provision for elections in new townships was overlooked in 1906, and so the General Assembly in 1907 added another section to the law of 1906, in which it was declared that when new townships are organized the county board is authorized to call an election for all township officers. These officers, however, are to continue in office only until those chosen at the following regular election have qualified.[56]

In the laws of 1870 a provision was incorporated which made the township a district for the equalization of taxes. The trustees were now required to adjust the assessment in the township in the same manner as the county supervisors were directed to act with reference to the townships within the county. Acting thus as an equalizing board they were required to listen to grievances and to adjust the same in accordance with their own judgment.[57] This act being amended in 1880, it became necessary thereafter for the board to publish at their first meeting the names of all persons whose assessment was to be raised, and to hold an adjourned session before final action. Opportunity was thus provided for individuals to appear in their own behalf if any were dissatisfied with their assessment.[58]

When the incorporated town became a problem in the township — probably because it was able to control the government locally — the General Assembly, in 1872, provided for a separation of the two organizations whenever the town included a population of four thousand or more. In order to accomplish such a division it was necessary that a majority of all the legal voters outside the corporation should present a petition to the board of supervisors requesting such action. Previous notice having been given according to the law, the county board was authorized to divide the township and provide for the election as in the formation of new townships. The trustees and the clerk of the recently divided township were, however, required to make a choice of three persons to act as trustees and one to act as clerk in the preparation of the registry lists as provided under previous laws and to function in the first election. Furthermore, the regularly constituted board was required to continue to act

with the new members in the preparation of the voting lists. This legislation has been frequently applied.[59]

An amendment of 1884 reduced the population required before a division could be asked for, to fifteen hundred. It further provided for a remonstrance, as well as a petition; and a hearing of both sides, in case it was desired, must be granted also by the county board before final action was taken upon any such division.[60] At the very next session of the General Assembly this law was amended by adding the provision "that when the citizens of any township so set off desire to dissolve their township organization and return again to the township from which they were taken, they may do so by the same procedure"— except, as the law states, that the petition "shall be signed by a majority of the electors of both townships."[61]

In 1892 the offices of township trustee and clerk were abolished in cities of seven thousand or less, wherein there was one civil township the boundaries of which were coincident throughout with the city boundaries. The duties heretofore required of these officers were now to be performed by the city council and the city clerk, respectively. Furthermore, the "money and assets" of the civil township became the property of the city which controlled them thereafter. Funds in the hands of the township clerk were now to be surrendered to the city treasurer, who must furnish the necessary bond and disburse them in the same manner and for the same purposes as required by law for the disposition of township funds. The city, moreover, was required to assume all debts of the township.[62]

Legislation in 1890 gave to county boards authority to change township boundaries in order to make them con-

form to the limits of cities and "to make such other changes in Township lines and the number of Townships as they may deem necessary". It was definitely stated, however, that no such change should affect the existing boundaries of school districts. This act related to cities of which at that time there was not more than one in the State.[63] In general the lines of civil townships can not be changed if by so doing a school district or subdistrict is divided, unless such changes are made to cause the civil township boundary to coincide with that of the congressional township. Only on petition from residents of the district is such action permitted.[64]

Closely related to the above acts and inseparable from civil township legislation in general, there is in an act approved on April 24, 1872, a provision for forming a district township from a portion of an independent school district. It was declared in the act that when such an independent district embraced "a part or the whole of a civil township", wherein there was no "separate district township organization", the directors, upon the petition of two-thirds of the electors residing within the independent district, should "set off" the territory named to be organized as a district township in the same manner as in the organization of such districts in a new civil township. A further provision of this act required the board of directors to restore any portion of a district "set into an adjoining county or township" to the township in which it geographically belonged, upon request of two-thirds of the electors residing in that portion of the township upon which the schoolhouse was not situated.[65]

Since 1851 counties have had the privilege of adopting a herd law. It was not until 1872, however, that townships were granted such authority. Upon the presenta-

tion of a petition from one-third of the legal voters requesting a vote upon the question of restraining stock a proposition must be submitted in the usual manner, after due notice of four weeks before the following general election. Should such a measure secure an affirmative vote, a notice of ninety days must be given before it became effective. The clerk was required to post the result of such an election in five public places in the township within ten days after the election.[66] This provision does not appear in the *Code of 1897*.

An act of 1876, made more effective by an amendment in 1902, authorized the township to levy a tax for the purchase and maintenance of plats of land for cemetery purposes. The original act empowered the township trustees not only to condemn land for the survey but also to transfer lots for such purposes. The same officers were authorized to control the plat or to appoint a special board with full power to act. Furthermore, such a tract might be disposed of to a private corporation, provided it was maintained for the same purpose. The later action of 1902 authorized a similar tax in aid of a cemetery in an adjoining township, if the township trustees should deem such action advisable.[67]

PART II

THE OFFICERS OF THE TOWNSHIP IN IOWA

V

THE TOWNSHIP TRUSTEES

In the Territory of the Northwest it appears that township trustees or managers were named among the township officers in a law of 1802. Duly chosen by the electors of the Territory, the first required duty of these township trustees appears to have been the dividing of their respective townships into road districts, over each of which they were authorized to appoint a "supervisor of roads". As managers of all township affairs they were to fill vacancies in office by appointment, to call township meetings, and to audit claims which were to be paid upon their order. Moreover, other township officers were required to settle their accounts with the trustees.[68] According to a law of Ohio in 1806 as soon as there were twenty qualified electors in "original surveyed" townships three trustees were to be elected for the care of section sixteen, known as the school lands.[69] This was their sole duty until 1810 when another law placed the twenty-ninth section, or lands "set apart for the support of the gospel", under the care of the same officials.[70]

From these laws and others of the same period one must conclude that two classes of trustees existed at the same time in the State of Ohio — trustees of civil townships and trustees of original surveyed townships. Trustees of the civil township had numerous duties; while trustees of original surveyed townships were assigned the one specific duty of caring for public lands. The duties

of the trustees in civil townships were increased rather than diminished, and in certain instances they performed functions which under other conditions belonged to the trustees of the original surveyed, or congressional township as it is now usually designated.[71]

In the laws of Michigan and Wisconsin prior to the organization of the Territory of Iowa no provision appears concerning such officers as township trustees or managers.[72] The first Iowa law providing for the organization of townships was enacted by the Territorial legislature in 1840 and the elective officers enumerated in that act included three trustees, who should continue in office until their successors had qualified. As suggested in the comparison above (page 27) the Ohio statute of 1804 was evidently consulted in drafting this bill.[73] By the provisions of the act of 1840 the trustees were made responsible for the general conduct of affairs in the township, for calling the annual meeting, for filling vacancies in office, and for hearing petitions on matters of business to come before the township meeting and on the opening of roads. They became, furthermore, ex officio judges of the general election in their respective townships with power to appoint the necessary clerks. In addition to exemption from labor upon the roads, their compensation depended upon the will of the electors, who, at the annual meeting, might allow a sum to be paid from the township treasury.[74]

In 1842 the trustees, on the authority of the township electors, or when in their opinion it was necessary for the support of the poor within their township, were authorized to levy a property tax according to the laws of the Territory governing the revenue. In the act of 1840 the township had been empowered to levy such a tax, but

what officer or officers should act was not specified.[75] It was further provided, in 1845, that the trustees should become, by virtue of their office, "overseers of the poor and fence-viewers, for their respective townships". By that law they were required also to establish township roads, under certain restrictions which related to property owners and the dimensions of such township roadways.[76]

The earliest laws of Iowa, as stated above, designate the township trustees as a general election board; and it appears that their duty with reference to elections has continued from that time to the present, modified to be sure by statutes making changes in the management of elections. As stated also, the trustees in 1868 were made a registry board, with duties as outlined above (page 47). Then in 1872 it was provided that if an error should occur in balloting for a township officer at a special election a new vote might be taken at the discretion of the trustees.[77]

Until 1878 the term for which the trustees were elected remained at one year. Provision was then made by which they were elected for three years, their respective terms in the beginning being determined by lot by the board of canvassers so that one retired from office at the end of each year, thus making the board of township trustees a perpetual body.[78] Upon the adoption of the biennial election law in 1906 the term of office of the township trustees was fixed at two years and all three were to be elected at the same time.[79]

When, in 1878, two assessors were provided for, one within the incorporated town and one without (the area being comprised in the same township), the trustees were instructed to prepare two ballot boxes for such elections.

Again, by the same act, the ballot box for supervisors of road districts was prescribed, the trustees being directed to provide one with compartments, numbered to correspond with the districts in the townships. As supervisors of elections the trustees were likewise to direct the voting so that those qualified to vote in the various road districts should deposit their ballots in accordance with the numbered compartments.[80]

The election law of 1892, which provided for the secret Australian ballot, made the trustees responsible for all the equipment for which that law called — a suitable place for locating the booths, a sufficient number of the same, with the supplies of "shelves, pens, penholders, ink, blotters and pencils", and other necessary appurtenances. The details as to all local arrangements were left to the trustees; who were directed to so construct the booths that they might become permanent property to be preserved by the township authorities.[81]

While the estimate of taxes necessary for township purposes had been one of the functions of the trustees since the adoption of the law of 1840, they were not, however, authorized to act as a "board of equalization" until 1870. By the law then enacted the trustees were directed to act for their respective townships in the assessment of property taxes "so far as is practicable as is done by the board of supervisors between the several townships." Acting thus as an equalizing board they were required to hold annual meetings to adjust differences in valuation, to correct errors, and to add to or subtract from the assessment roll. Any person aggrieved was privileged to appear and make objections to his assessment, which the board was instructed to correct in a "just and equitable" manner.[82]

Although the power to estimate the tax levy is implied in the provision for township control in building roads, public buildings, providing for library facilities or other similar advantages, the law had necessarily to declare definitely when and for what purpose such a levy should be made. The trustees, in 1876, were empowered to condemn land for cemetery purposes and to pay for, improve, and maintain the same out of the general township fund. They were authorized also, in 1896, to certify a tax for a town hall, to act as the building committee for such a structure, and to provide for its equipment and maintenance, as well as to make regulations controlling its management. The tax for this purpose was collectible as other township taxes.[83] The trustees were likewise given authority in 1906 to contract for library facilities, which required another tax levy (see above p. 46). Action on this matter under the first law required a petition; but in 1907 the statute was so amended that a petition was no longer necessary. Accordingly the trustees may now act upon their own responsibility.[84]

When matters relative to the construction, improvement, and maintenance of roads and highways were placed under local control the trustees were assigned new duties. It was not, however, until 1853 that the control of the roads and highways lying within the boundaries of a township was finally left to the township authorities. Then the trustees were required to meet on the first Monday in March of each year for the purpose of "setting off" and determining the number of the road districts in their respective townships. The law declared that their acts in all particulars should be "for the public good". By the law of 1853 all the supervisors of road districts were made responsible to the trustees, who were to ap-

prove their accounts and allow a reasonable compensation for placing guide-posts at the forks of the public roads.[85] A law of 1858 changed the time of the meeting for the establishment of road districts to the date of settlement with the supervisors, which should occur thereafter in October of each year. It appears that April was the time specified for the levy of the property tax for road purposes in the township — the amount so raised to be expended for "roads, bridges, plows and scrapers". The law limited the tax which the trustees might levy to not "less than one nor more than three mills on the dollar". At the same session, in April, they were required to fix the allowance for a day's labor upon the highway and to notify the several road supervisors, through the township clerk, of their action.[86]

By an act approved on April 8, 1862, the township trustees were authorized to determine at their April meeting the portions of the road tax that should be paid in money and in labor. Or, as it appears, they were to discover the most efficient manner of expending the road fund belonging to the township. An act of 1868, amendatory to that of 1862, declared that the trustees should decide whether any part of the road tax should become a general fund for the purchase of tools or machinery for road purposes, and if so, what amount.[87]

By another law, providing for the improvement of highways, which was passed in 1884, the trustees were authorized not only to require certain hours of labor, to determine the compensation of the road superintendent when one was employed (see below p. 144), and to carry out the provisions of the law requiring bonds from road officials of whatever grade, but to determine also, if such a plan were adopted, when the consolidation of road dis-

tricts should take effect so far as it related to the beginning of actual work upon the roads.[88]

When the law of 1902 was passed making consolidation of road districts compulsory in the following year, the trustees became responsible for the execution of the law. Then in 1904 they were authorized, by the revival of an old law of 1840, to condemn lands and roadways leading to the same, for the purpose of obtaining gravel or other material used in the improvement of the highways. They were at the same time authorized to pay from the township road fund all the damages caused by such condemnation proceedings.[89]

A number of minor acts of 1906 relating to roads, gave additional power to the township trustees. They were permitted, for instance, to order the transfer to the road fund of any sum raised for the erection of a township hall, should the money no longer be desired for that purpose. Again, upon the proper presentation of an affidavit from the owner of a wagon using wide tires the trustees were authorized to grant the rebate in taxes allowed by the law in such cases. Furthermore, they were required to approve of road drags used on the highways and to order the use of the same under the direction of the superintendent of roads, whenever they agreed that such work should be done, and to allow compensation within limits prescribed by law.[90]

By amendments which were approved in 1911, the trustees are required to select a superintendent of dragging and likewise a road superintendent. The first of these amendments provides for the appointment of such officers at the April meeting of the trustees, while the second provides for the same thing at the February meeting, thus disclosing some error in legislation. The act of

April 7, 1911, requires the trustees to district the entire township, giving numbers to each division, and thereafter to designate the districts by number in giving orders for dragging; and they must not omit in this order the "mail routes" and "main traveled roads". It is their duty, also, to furnish suitable drags and adopt such regulations as the act prescribes for carrying into effect its provisions.[91]

At different dates the trustees have been designated as the proper officers to enforce the statute relative to the destruction of noxious weeds upon highways or elsewhere. An act of 1894 made provision for the compulsory removal of the Russian thistle; and if any person warned by another should fail to obey the law, then the trustees were authorized to enter upon any land to carry out the provisions of the statute. All costs thus incurred were to be certified, along with other taxes, to the county board, and to be assessed against the premises.[92] An amendment of 1909 included under these provisions many other weeds as noxious; and in the event that one person should lodge a complaint against another person or corporation for harboring such weeds, the trustees in every instance were empowered to order their destruction, and in the case of neglect, to have it done at the expense of the landholder.

This act provides further for a "school of instruction", which must be attended by the trustees and road supervisors of the county when called by the county board between the months of November and April of each year. For attendance at this "school" the compensation for the regular services of these officers is allowed by statute; while a failure to perform the required duties may result in a fine of not to exceed one hundred dollars.[93]

After lands were improved and roads established, the question of drainage received attention and the first act of the General Assembly relative to this subject was passed in 1862. It directed the applicant for any privilege under the law to file his request with a justice of the peace who was then authorized, through the aid of any constable, to summon the owner of the land, through which it was desired to obtain an outlet, to appear before him. At the same time a jury of six men was to be selected in the following manner: two by the applicant, two by the owner of the land through which such drain was to pass, and two by the four already chosen. These six were placed under oath to render a just appraisement of the damages to the landowner, their verdict to be delivered in writing.[94]

By a law approved on April 15, 1870, the trustees assumed the position occupied by the justice of the peace under the act of 1862; but no jury of six men appears thereafter in such cases, since the three trustees were to act in that capacity. They not only assessed the damage caused by the drain but they were also authorized to declare the dimensions of the outlet and the direction it should take. In this decision they were required to report their findings in writing as in the case of the jury under the former law of 1862 and to file the same with the township clerk.[95] Another law of 1870 relative to this subject appears to have made no amendment which affected the status of the trustees in their relation to such improvements. Neither was there any change in their duties in this connection until 1888, when the construction of "tile or other underground drainage" was touched upon in a statute which defined the duties of the trustees when acting in such cases. It may be said

that their conclusions were to be final except in the amount of damages assessed — this being subject to an appeal to the courts.[96]

Upon the establishment of drainage districts in 1904 the trustees were held responsible for the construction of any proposed drain across a highway, or the change in any natural water course in a like manner, the cost of which was payable from the township road fund. When the construction of a drain for any highway necessitated the crossing of private property and an agreement could not be reached, the trustees were directed by another law passed in 1904 to petition the county auditor for an adjustment of the differences through survey and appraisement as in the laying out of new roads. Again the costs were payable from the township road fund.[97] Moreover, by another statute the trustees were authorized to petition for a "drainage district" to include a highway, or to appeal from the decision of commissioners in making drainage assessments on account of the benefits to highways, in such cases acting for their townships as an individual property-holder would act when appealing from a personal assessment.[98]

The laws regulating the tax levies in aid of railroad construction made the township electors practically supreme in any movement of this nature, since the trustees had no alternative but to act when the proper petition was presented — first, to submit the question to a vote, and second, to levy the tax when the measure had carried. The proceedings, so far as the trustees were concerned, were the same under all statutes relating to this special tax — the first of which was framed in 1868. The vote, the canvass, the levy, and the certifying of the latter to the county authorities for collection were provisions

in all such laws. In the later acts, however, they were authorized to certify also to the fulfillment of contracts and conditions, while in the case of the removal of any railway constructed with such aid, the corporation must serve notice upon the township trustees.[99]

The common school law of 1847 which provided for a township inspector required the trustees to approve his bond, determine his compensation, and provide for the filling of vacancies in his office. It was at the same session of the General Assembly that the trustees of each township were first directed by law to make a careful examination of the sixteenth section. The provisions of this law, requiring the survey, appraisement, or valuation of school lands, are the same as those found in the law of 1858, except as to the minimum values permitted to be placed upon such lands. In both laws the trustees were to "parcel out" according to the government survey, and at the same time consider the advantages to the school fund in placing a true value upon the several parcels. By the law of 1847 the reports of their proceedings as to survey and appraisement were to be made to the school fund commissioner, while by the law of 1858 the reports went to the county judge. It appears that the county judge, as the law provided in 1858, might veto their findings and order a new appraisement.

By the provisions of the law of 1858 the trustees and the county judge were constituted a board for the consideration of the sale of these school lands. The approval of the judge and two trustees was necessary in order to publish such a sale; and all of these officers were prohibited from purchasing any lands thus offered. Moreover, all lands of this character remaining unsold were in the care of the trustees, who should prevent

"trespass and waste" upon them; and in the event of suit being brought their testimony in such instances would be sufficient evidence to authorize the court to assess the damage.[100]

A further provision of the common school act of 1858, authorizing the formation of the district township, required the township trustees to call the first meeting of the directors of districts then formed, who became officers in subdistricts. A similar provision in a law approved on December 24, 1859, and in force on March 1, 1860, made them responsible for the issuing of a call for the first election in new district townships. But this provision did not apply when the existing district township was divided in such a way that it formed "two or more entire townships for civil purposes".[101] Again, by an amendment of 1862, the trustees were directed to call special elections when "an organized district township" was left without officers. Moreover, this law authorized the trustees to establish the boundaries of independent school districts upon receiving written request as provided in the act. All notices of election upon the proposed plan of the district organization must also be issued by the trustees.[102] This responsibility was removed in 1868 when the duties imposed upon the township trustees in connection with the formation of independent districts were to be assumed by the "board of directors of the district township."[103]

Acting as a board of health the township trustees were authorized by law (first in 1866) to perform certain acts and assert certain powers to protect the public against sources of disease, and to suppress nuisances in any portion of their jurisdiction through legal notices served by the constable of the township. They were

granted authority, also, to prohibit communication where contagious diseases were present, to establish hospitals and pesthouses, and to remove any person thereto if in their opinion such removal was necessary for the safety of the public. Furthermore, they could adopt such regulations as they might consider necessary and employ all assistance needed in carrying them into effect. The expenses which they might thus incur in the discharge of their duty became a charge upon the township which was collectible in the same manner as other taxes.[104]

The protection of domestic animals was also among the official duties of the trustees, since a law of 1884 stipulated that if a majority of the trustees "whether in session or not, shall notify the governor of the prevalence of, or probable danger from," any disease (which here refers to diseases of domestic animals) he must take action to remove such danger.[105]

It is noted that the first acts governing the trustees acting as a board of health made no definite requirements as to annual meetings of such a body. In later laws, however, such meetings are specified. The act of 1909 calls for two meetings annually — one on the first Monday in April and the other on the first Monday in November. The trustees are required to publish all of their local regulations and inform themselves as to the regulations issued by the State Board of Health, to whom they must also make the necessary reports. Subordinate officers of the township are subject to the orders of the trustees in these as in other township matters, and the purchase of all supplies in the case of detention hospitals is authorized by them. Nor will any bill be allowed until audited and certified by the trustees.[106]

Vacancies in township offices from whatever cause

have usually been filled by the trustees. When, however, the offices of all the trustees were vacant such powers devolved upon the township clerk, and in the event of all offices becoming vacant the county auditor had jurisdiction. A provision of the law approved on April 3, 1866, required the clerk to notify the trustees of any vacancy in the office of justice of the peace, constable, or county supervisor. At a special meeting called at the usual place of holding elections the trustees were authorized to appoint some suitable person who should qualify in the same manner as if elected. Moreover, the same penalty attached to any failure to qualify as in the case of the original occupant of the office.[107]

To act as a jury in estimating damages appears to have been almost an original function of the trustees. If traced to its source, one would probably find that when the duties formerly belonging to the selectmen, the fence viewer, and some other minor officers of the township were combined in the trustees this phase of their administrative duties became prominent. As improvements were made and settlements became more thickly populated differences as to private rights became more frequent, requiring judicial action on the part of some official. Then, it appears, the board of trustees became the natural source of such authority. In the earliest laws relating to township officers in the Territory of Iowa fence viewers were provided for, but their duty soon devolved upon the trustees. The law defined a "legal fence", and damages resulting from domestic animals breaking through such an enclosure were to be determined by the trustees after "viewing" the same. In such cases the action taken was typical of the proceedings heretofore referred to under the drainage laws.

After having been summoned to view the damage caused by domestic animals and after having completed and filed the record with the township clerk, the chairman of the board of trustees was authorized to sell the animal or animals to satisfy the claim and costs if the damages were not sooner paid by the owner. Moreover, if no owner could be found and a residue remained after paying all damages from the proceeds of the sale, the chairman was directed to pay over the amount to the county treasurer for the benefit of the school fund. Should a trustee in any instance be an interested party another person must be selected to act for him in adjusting such claims, and an appeal from their decision to the courts was permitted to either party.[108]

As representing their own township the trustees were given authority, in 1876, to appear in its behalf when a railroad corporation sought through legal methods to remove its track which had been constructed over a given route according to a contract. This act applied, however, only to those roads which had been built previous to 1866. Again, in 1884, they were authorized to employ attorneys "whenever litigation shall arise involving the right or duty of township trustees" to levy or certify to taxes voted upon "expressed conditions", and when they became parties to the suit. Moreover, they were empowered to add to the tax estimates an amount sufficient to pay the attorneys employed.[109]

The compensation of the trustees may be provided for either in the form of fees or a per diem. The payment for public business comes from the county treasury. For acting as fence viewers or for hearings in damage cases, the fees must be met by the persons against whom damages are assessed; and as provided in the *Code of 1897*

this is a part of the required record in their proceedings. The *Code of 1851* allowed the trustees one dollar for six hours actual service, and this was considered as one day's work, while service as fence viewers was paid for as above. A law of 1870 fixed a compensation of one dollar per day when they were engaged in assessing damages due to domestic animals and this sum was payable from public funds. The legislature at the same session granted the trustees one dollar and a half per day for services in locating drainage ditches and determining the damages due to them which might be collected in advance from those interested. Soon afterward, the *Code of 1873* fixed the compensation at two dollars for an eight hour day. Then, in 1876, for acting as fence viewers, or in matters connected with drainage as mentioned above, their fees were increased to two dollars per day payable in the first instance by the person making the complaint. For duties connected with the highways the law of 1884 allowed the same compensation as for other township business. Finally, by an act approved in 1909, in townships having a population of thirty thousand and comprised within the limits of a city acting under a special charter the per diem of township trustees was increased to three dollars.[110]

VI

THE TOWNSHIP CLERK

With the provision for the organization of townships in the Territory of the Northwest the justices of the general court of quarter sessions were empowered to appoint a clerk in each township throughout the several counties, who should hold his office during good behavior. His duties at that time may be briefly summarized. He must "keep a fair book of entries", which should contain the descriptive marks or brands claimed by owners of domestic animals if any person desired such a record and chose to pay the necessary fee; and must likewise keep a second book in which all estrays which might be reported to him should be minutely described. These duties appear to have constituted his chief if not his entire responsibility.[111]

When townships under the Ohio statute of 1804 became bodies politic and corporate the clerk was to be chosen by the electors of the township, and like other officers his term was to expire when his successor had qualified. While his duties included those previously described, the later act required the keeping of "fair and accurate records of all the public transactions of the township meetings", the reporting of the names of all township officers of whom oaths were required, and the recording of all private roads and cartways. He was, furthermore, directed to act as clerk of the township board of trustees.[112]

In the Territory of Michigan, in accordance with an act of 1827 relating to townships, the clerk was elected for one year. This law, in defining his duties, declared him to be the custodian of all books, papers, and documents belonging to the township, and to be authorized to approve the bonds required from the constables and to report the names of the latter to the county clerk; while failure to perform this duty made him liable to a fine of ten dollars. He was authorized also to act as a member *ex officio* of the election board in his township; and by him notices of regular or special township meetings were to be posted.[113] The act provided further that it was the duty of the "clerk last before elected" to serve as clerk of the township meeting and to preserve a faithful record of the proceedings, and he must deliver to the township supervisor a certified copy of all entries of votes for raising money.[114] He was charged with the care of the records of the township board, of which he formed a part, in the granting of tavern licenses; and he was required to report to the county clerk the names of all persons holding such documents.[115]

When the country now included in Iowa was attached to Michigan Territory (1834) the status of the township clerk appears to have been the same as defined in the Michigan statute of 1833, which incorporated the provisions as expressed in the statute of 1827 and also gave the clerk power to appoint a deputy. Furthermore, there is no recorded change in his official duties after Iowa was brought under the jurisdiction of the original Territory of Wisconsin until June 22, 1838. An act was then approved providing that "where by law the clerk of the county court or township clerk is now authorized or required to perform any official act, such power or duty

shall hereafter devolve upon the clerk of the board of county commissioners.'' This act, it may be said, practically abolished the office of township clerk just before the Territory of Iowa was established.[116]

Thus, until the law establishing townships had become effective in the Territory of Iowa and until the counties had adopted its provisions, the duties of the township clerk were performed by the clerk of the board of county commissioners.

The first act of the Territorial legislature of Iowa relative to townships, which was approved on January 10, 1840, names a clerk among the officers. In the passages previously quoted, as well as in laws referred to up to this point, his duties as they appear in the law of 1840 are in part defined. Other responsibilities found in this act are the recording of all ''roads and cartways by the trustees established'' and also the ear-marks of all cattle, sheep, and hogs or other animals, at the request of owners. In making the road record, the law allowed the officer ten cents for each one hundred words, while for recording marks and brands the owner must pay a fee of twenty-five cents. Should an elector who had been regularly chosen to this office fail to qualify, the statute required a forfeiture of three dollars for the use of the township.[117]

In 1842, the act of 1840 having been repealed, a new law made some changes in the functions of the township clerk. While all the duties prescribed in the previous act were retained, an additional responsibility appeared in that he was required to make from ''the county assessment roll for the township, an assessment of the tax voted for by the township or ordered by the trustees for the support of the poor''. He must, furthermore, deliver

within twenty days a duplicate of this assessment to the constable named by the trustees to collect the tax and a second copy to the township treasurer.[118] These appear to have been the chief functions of the township clerk when Iowa became a State in 1846 — an amendment of 1845 making no marked change.[119]

From the organization of townships under the law of 1840 until the present day the clerk has been one of the important officers in the conduct of local affairs. His duties, which from the outset were numerous, have been increased rather than diminished under later statutes. The *Code of 1851* declares that the clerk shall perform "acts as may be required of him by law"— that is, keep accurate records of the proceedings of the township trustees; administer the usual oaths and file the necessary records concerning them; and notify the county judge immediately following the election, of the names of justices of the peace chosen in his township, a record of which he must also preserve in his own office. Moreover, he was directed to notify, through the assistance of a constable, all the township officers elect — except justices of the peace and constables — to appear before him within a limited period and subscribe to the statutory oath. He was authorized also to issue a certificate of election to all officers thus qualifying.[120] This provision of the *Code of 1851* relative to the functions of the clerk in elections was not amended, it appears, until 1862, when he was required to "post up" within five days following the canvass of the votes, in three public places in the township, the names of all persons elected to township offices. This seems to have been considered sufficient notice for them to appear before him and qualify.[121]

When the registry board was provided for in 1868 the

clerk became *ex officio* a member and the law fixed the place of meeting at his office — wherever that may have been. The "register" of the voting list was left in his charge, and he was required to cause to be posted in his office a duplicate list which must be accessible at all times to any elector within the township.[122] The clerk, it may be said, became *ex officio* one of the clerks of the election board in 1843, and where two or more precincts had been established in his township he was authorized in 1873 to act in the precinct where he resided. Moreover, this appears to be his responsibility relative to elections at the present time.[123]

Until roads had been established by the county to some extent, the township was not concerned directly with their control. When, however, the trustees were authorized to establish township roads the clerk was required to record the same. Again, when road supervisors became township officers and districts were set off within the township the duties of the clerk in relation to roads appear to have been largely increased. In 1853 he was required to furnish the several road supervisors of his township with a plat of the district over which each of them had jurisdiction. He was likewise responsible for the preservation of the bonds of these officers as filed with him; and he was required to furnish a personal bond approved by the county judge as security for the road fund coming into his hands before he was authorized to draw such funds from the county treasury.[124]

A further requirement was made of the township clerk by a law of 1858 relating to the construction and control of roads. By this act he was held responsible for a map of the township, furnished by the county judge and upon which all legally established roads were to be prop-

erly shown. As new roads were laid out it was the duty of the clerk to record the same in so far as they affected his particular township. He must also place in the possession of the supervisor of roads in any district all the data available from the plat and field notes which related to any road over which he had jurisdiction. It was, furthermore, the duty of the clerk, when the trustees had made their levy for roads as the law required, to prepare a tax list for each road district in his township to "be in tabular form and in alphabetical order" and for which the county judge was required to furnish the necessary blanks.[125]

When non-resident landholders failed to make provision for their highway taxes the township clerk was responsible to the county judge at first, and later to the clerk of the board of supervisors, for a report concerning the "non-resident land and town lots" upon which such a levy remained unsatisfied. It was his business to see that such a report was transmitted within a limited period, and for neglect or failure he might be penalized in an amount equal to the entire tax.[126]

A law of 1884 providing for the improvement of highways permitted townships to adopt the "one highway district plan", which called for a general road fund in instances where such a system was put into practice. In that event the clerk was directed to furnish an additional bond for twice the sum that might, under such an arrangement, come into his hands.[127] Single highway districts were made mandatory in 1902 and by that act the clerk was not only required to certify the road levy to the county auditor but also to furnish the road superintendent with a list of all persons subject to poll tax. The data for the last item was available through the as-

sistance of the assessor, who was commanded to furnish a copy of the township assessment for that year.[128]

An amendment of 1909 stipulated that the clerk should not only provide a list of the persons subject to a poll tax for that year but also of the property road tax. The clerk in making this report to the road superintendent was at the same time directed to report to the county auditor, before the second Monday in November, the property road tax which had been worked out.[129] The recent law, passed in 1911, providing for the dragging of highways requires the clerk to set aside the necessary funds for this purpose, and fixes a penalty for neglect or failure to comply.[130]

Formerly, when domestic animals were permitted to run at large, and even in later years when such privileges were prohibited, owners frequently identified their property by means of certain marks or brands which were or were not recorded — such record being optional with the possessor. Since the time of township organization the clerk has been and continues to be the local officer in whose care a book for this purpose is placed by the county authorities. Such a record of marks and brands passes with other records to his successor in office.[131] The clerk is liable to be summoned to record the action of the trustees when they are called upon to assess damages caused by domestic animals; and in the event of an appeal to the courts from any such assessment as may be decided upon by the trustees, the township clerk must file a transcript of his record and other documents concerning the case with the clerk of the court.[132]

Again, an appeal from the decision of the trustees when acting as fence viewers requires a similar proceeding on the part of the clerk. There appears, however, to

be this difference: in the former instance a copy of the record is filed, while in this case the original papers are forwarded to the clerk of the court after they have been recorded. Other provisions governing the township clerk require him to approve of appeal bonds filed with him in such cases. Moreover, two clerks may be concerned with the same record if a division fence located upon a township line is in dispute. In such cases the decision reached by officers of the adjoining townships must be recorded in both townships.[133]

The construction of drains and ditches may require the judicial action of the township trustees when an amicable arrangement can not be made, and this will require action, also, on the part of the clerk. The *Code of 1873* as amended by a statute of 1884 gave authority to any person who claimed damages on account of such improvements to file his application with the township clerk, who then became responsible for a special call to the trustees to provide a hearing in the controversy. The clerk must then notify both parties stating the time and place of such meeting. Upon an appeal being taken from the decision of the trustees the clerk became the depositary of the amount of the damages assessed or of the necessary bond, depending on which of the two parties made the appeal. Again he was required to furnish a transcript of all the proceedings to the clerk of the court.[134] An amendment of 1909 directs the clerk to cause the findings in such damage cases to be placed upon record, not only in his own office but also in the office of the county recorder. It appears, then, that all such proceedings must hereafter be so recorded under the direction of the township clerk. He is further authorized, as the representative of his township, to file objections to

any assessment upon it on account of benefits arising from the construction of any drain on orders from the county board of supervisors.[135]

In certain contingencies the clerk has been empowered to fill vacancies in township offices by appointment. In 1858, for example, the law provided that immediately upon his receiving notice of a vacancy in the office of road supervisor he should fill the place.[136] In 1866 another statute instructed him to call the trustees whenever he had been notified of a vacancy in the office of "Justice of the Peace, Constable, or member of the Board of Supervisors". The clerk had authority to fix the location and the time of such a meeting and was required to inform the trustees in writing of the particular reason for the call, not less than five days previous to the session. For such service any constable of the township must be at the command of the clerk. Again, after the vacancies were filled through appointment it devolved upon the clerk to send the proper notice to the appointee, the necessary entry having been made in his records. Later, in 1870, a law was enacted giving the clerk power to fill all vacancies whenever the offices of trustee were entirely vacant.[137]

For many years the clerk had performed the duties of a township treasurer; but it was not until 1876 that he was directed "on the morning of the day of each general election" to post a public statement of the receipts and expenditures connected with his office for the preceding year. This statement, however, was subject to the approval of the trustees before its publication. Under another provision found in an act of 1876 the clerk was made the recorder of deeds to cemetery lots, the plat of

which at that date became a part of his numerous documents. Thus he was required to perform, aside from his ordinary clerical duties, a function corresponding to that of the county recorder.[138]

As the custodian of the funds distributed to the townships under the mulct tax law of 1894 the clerk was instructed to apportion the amount coming into his possession from this source equally among the road supervisors, to be expended by them in the improvement of the roads under their jurisdiction. As the matter now stands it seems to have required three separate acts to make perfectly clear the duty of the clerk. First, in 1894 the division of the fund was provided for; second, in 1896 the township was specified; and finally, the *Code of 1897* designated the township clerk as the officer who became responsible for the fund.[139]

By a statute approved on March 29, 1900, the financial duties of the township clerk are summarized as follows: it is his duty "to receive, collect, preserve, and disburse", in accordance with the orders of the trustees, "all funds belonging to his township" and also all those funds that may be created or authorized thereafter. This, indeed, appears to be the first and only direct definition of the financial responsibilities of the clerk — a definition which seems to have been needlessly neglected.[140]

By the act establishing a system of common schools, which was approved on January 16, 1840, the township clerk became *ex officio* clerk of the board of school inspectors. Among his duties in that capacity it appears that he was required to attend all meetings of the inspectors and under their instructions prepare "all their reports, estimates, and apportionments of school moneys,

and record the same and all their proceedings in a book to be kept for that purpose." Moreover, he was expected to receive and keep all reports made to the inspectors as they came from the several districts. Communications from the Superintendent of Public Instruction were to be made through him; and reports were to be sent by him to the clerk of the district court. He was, it seems, subject to any order of the township school inspectors when acting under the provisions of this law.[141]

The school law of 1847 made a similar provision, which differed in respect to the number of inspectors the clerk was required to serve — there being but one provided for in the law of 1847 — but his functions respecting the schools of the township were not changed.[142] In 1849 the statute of 1847 was so amended that the clerk was relieved of his obligations as clerk of the inspector.[143] Nevertheless, in 1860 he appears again in an act which makes him secretary of the township district school board, composed of the directors from the several subdistricts. It is specifically mentioned that he shall have no vote in any meeting of this board. In the absence of the president, however, the clerk — as secretary of the board — was authorized to preside. It is furthermore clearly stated in the general provisions of this law that when but one subdistrict was formed in a civil township, then the three directors, for which the act provided in such cases, "together with the township clerk shall constitute the township board". And further, when but two subdistricts were possible in any township, and consequently but two subdirectors, the law provided that the secretary in the event of a disagreement should cast the deciding vote. While acting as secretary for the school authorities the clerk's duties were those of a clerical

officer, keeping such records as were required and for which separate books were provided. It was his business to post all notices summoning directors to a regular or special district meeting and to certify the school tax levy to the county auditor.[144] After 1862, however, the township clerk did not act as secretary of the school board.[145]

It is probable that the township clerk, acting as the recording officer of the trustees, could be considered as clerk of the local board of health from the time of the passage of the law creating it in 1866, but it was not until 1880 that he was designated as such. Later, in 1892, he was charged with the enforcement of the quarantine laws and directed "to maintain and remove such quarantine" as the law provided and as might be required by the regulations of the local board.[146] In 1904 the clerk was made responsible for the registration of vital statistics in his township, and upon his election or appointment was required to select a deputy who must be approved by the State Board of Health. Subregisters, also, but not more than three in each township, who were to be appointed by the State Board of Health, were required to report to the township clerk. The data thus collected formed the summary which the clerk must forward to the State Board of Health.[147]

Certain police powers were conferred upon the clerk in the act of 1896 making provision for the erection of a town hall. As custodian of such an institution he was authorized to preserve order "within and about the premises", and in so doing to enforce all regulations adopted by the township trustees.[148]

The latest additional responsibility placed upon the township clerk is found in the statute of 1911, creating the office of State Fire Marshal. By this act it becomes

the duty of the clerk to begin an investigation of the causes of all fires within his jurisdiction not later than two days following the occurrence, and within one week thereafter to file a written report with the State Fire Marshal. Other information may be demanded of him through regulation forms issued by the State department.[149]

The compensation of the clerk has been defined in three forms according to the various acts governing his powers and duties. There are fees, a per centum, and a per diem, all of which have been subject to increase or decrease. When his chief duty consisted in the recording of marks and brands a fee of twenty-five cents was the limit. As acting clerk of the board of school inspectors, as provided in the law of 1847 relative to schools, his allowance was left to be determined by the township trustees. The *Code of 1851,* however, fixed his compensation at one dollar for six hours labor — a record of which he must make from time to time as his services were concluded. According to an act of 1858 the clerk was permitted to retain five per cent of all money coming into his hands "by virtue of his office" and one dollar and a half for "all days necessarily employed" in the discharge of his duties.

In 1862 the provision of the *Code of 1851* by which one dollar was paid for six hours work was restored, and in addition a "bill of items" must be signed and sworn to before being filed with the clerk of the county board. The *Code of 1873* increased the per diem to two dollars, and in 1876 the provision allowing five per cent was amended so that all money coming into his hands by virtue of his office should not include that which came from his predecessor. In 1907 this allowance was reduced

to two per cent, while for caring for road tools the remuneration should be fixed by the trustees as it had been previously according to the *Code of 1873*. In 1884 the percentage of the road fund under his control was reduced from five to two per cent; and in 1906 this was cut off entirely.

In all cases of appeal from the decision of the trustees concerning drainage or damages from domestic animals, the clerk is allowed a fee for making transcripts of and for entering records. His compensation as clerk of elections is provided for in the election laws. In special charter cities of thirty thousand or more population constituting a single township a provision of 1909 allowed the clerk a compensation of three dollars per day.[150] Where a direct per diem payment is made or fees for public records or service are allowed the county funds are the source of payment, while in other cases fees are taxed to the individual.

VII

THE TOWNSHIP ASSESSOR

The right to choose a township assessor by ballot was conferred upon the free male inhabitants of the Territory of the Northwest in 1795. The law declared that the choice should be made by "writing on a piece of paper the name of the person" who was preferred for assessor, and that the person having the greatest number of votes, "being a freeholder of good fame", should be "attended to" as the assessor of the township. Thereafter the officer so elected should continue to serve until his successor had qualified.[151] Other officials, similar in function, are also designated among the township officers as provided for in 1802, namely, "appraisers of houses and listers of taxable property" who were charged with specific duties in the levying of taxes.[152]

In 1827 the Territorial legislature of Michigan made provision for the election of "not less than three nor more than five assessors" in each township.[153] In 1833 these assessors were authorized to district the township for assessment purposes in a manner which to them appeared most convenient, but the number of such districts should not be greater than the number of assessors. As a board of review they were to hear the complaints of persons who considered themselves aggrieved, the assessment rolls being subject by law to the inspection of any person.[154]

For the purposes of carrying into effect the laws of

Michigan relative to the levying of taxes, the county in the Territory of Wisconsin was to be regarded as a single township. Before such laws became effective, however, the Territorial legislature of Wisconsin amended the several Michigan acts by making the assessor, while originally a township officer, responsible for the area included in the entire county.[155] This was the only change made in the statute of Michigan relative to the assessor as extended over Wisconsin until 1838. In January of that year the legislature of the Territory of Wisconsin provided that "at the time and place of holding the election for county commissioners" one assessor should be elected for the entire county. He must possess the qualifications of an elector — which, indeed, was required of all persons previously chosen to this office. His term was fixed at one year, which was the usual time for such service; and he was required to furnish bond to be approved by the county commissioners, who were authorized also to fill vacancies in the office. In this instance the law fixed the amount of the bond at three hundred dollars. Security, it appears, had been required in the form of a personal guarantee as to fitness when the assessor was first named by the township electors in the Territory of the Northwest in 1795. This was furnished by the signatures of "six free-holders", in addition to the three judges who signed the certificate of election.[156]

As an illustration of the application of Wisconsin law to local jurisdictions in 1837, the election in Lee County (Iowa) on Monday, April 3, 1837, may be cited. It was held, as stated in the county records, for the purpose of electing three supervisors, three commissioners of highways, and three assessors, in addition to other

officers. Calvin J. Price, William Newcomb, and Stephen Graves were the assessors chosen at this township election, which included the entire county. This may indeed be regarded as typical of Michigan law as well, since as noted above, a statute of that Territory passed in 1827 provided for from three to five assessors in each township.[157] Furthermore, the Wisconsin statute which was passed in January, 1838, became, by the Organic Act establishing the Territory of Iowa, effective in the latter Territory until changed by the legislature.

By the Wisconsin statute the assessor was to be chosen for the entire county as a county officer, as is seen in the record of the election of a single assessor in Lee County, recorded in September, 1838. J. P. Barnett was chosen assessor, probably at the April election of 1838.[158] Again, the records of Scott County illustrate the power of appointment as set forth in the Wisconsin law. It is stated that neither the county treasurer nor the county assessor had qualified for their respective offices following the election of 1838. Thereupon the commissioners appointed to both vacancies one Ira Cook, who furnished bonds as required and took the oath of office as treasurer and assessor.[159]

The first law of the Territory of Iowa relative to the assessing and collecting of county revenue, approved on January 24, 1839, provided for an assessor for each county.[160] Nor is he again to be considered among the township officials until the act approved on February 13, 1843, became effective, when his term was fixed at one year and his bond of one hundred dollars with securities approved by the board of trustees was to be filed within ten days. Within that time also he must further qualify by taking the proper oath before the township clerk. In

counties not organized into townships the assessor became a precinct officer with the same duties and requirements as township assessors, while his bond must be approved by the county commissioners and the oath administered by their clerk. For filling vacancies in this office in organized townships the trustees were to make the necessary provisions. In precincts it is probable that the county commissioners were authorized to act, although the law does not so declare. There was, moreover, no penalty provided for failure to qualify.

By the statute of 1843 authority was conferred upon the assessor, whenever he should deem it necessary, to appoint a deputy, subject to the approval of the township trustees, and each deputy was required to qualify in all respects as the principal officer; while for all the official acts of his deputy the assessor was to be held responsible. Immediately following his election and qualification, the duties of the assessor, as defined in the act, were to begin, and "on or before the first Monday in July" his assessment roll must be delivered to the county commissioners. A provision of this act which, however, related only to the assessment of real estate, names an appraising board to be composed of the "present" county assessor and two especially appointed commissioners or appraisers. This board was authorized to determine the value of real estate for the following five years, and was to act, it appears, independently of the township assessor. The assessor was instructed to give "a full description of all town lots in his township, or precinct", and also to add all property that might have been "omitted by his predecessor", the county assessor. For all these services his compensation of two dollars per day was payable from the county treasury and was subject to a discount ac-

cording to the judgment of the county commissioners in the event of failure on the assessor's part to make a full and complete assessment of property in his township.[161]

During the following session of the Territorial legislature, which commenced in December, 1843, the act approved on February 13, 1843, was repealed. The status of the assessor was not materially changed, however, by the new law which was approved on February 15, 1844. He remained as before a township or precinct officer with the same term of office; but his bond was doubled, and a failure to furnish bond within ten days resulted in a vacancy, which was filled by the trustees as provided in the act of 1843; while for a precinct vacancy the county commissioners were held responsible. The compensation of the assessor was reduced to a per diem of one dollar and fifty cents, and at the same time he was not allowed to appoint a deputy. Furthermore, a penalty of five dollars was imposed for failure to qualify, with the provision that no one should be compelled to serve two years in succession.

While in the former statute it had been provided that the duties of the assessor should begin immediately following his election, the act of 1844 fixed the time as within three days after the first of May. Then, in assessing real estate it was necessary only to "describe it briefly", using the number or the name the property was usually known by in the neighborhood or township. The assessor was authorized to secure from each person the necessary information; and if any such person should refuse, the law furnished a simple remedy, namely, that he must obtain it "by the best means in his power". As a penalty, imposed for refusal, the assessor was authorized to double the taxable value of the individual so

refusing. Upon filing his returns with the clerk of the county commissioners, he was required to give notice of that fact by "at least three advertisements in his township or precinct", this being deemed necessary in order that all persons "aggrieved by such assessment" might appear thereafter at the office of the clerk of the county board and make their complaint.[162]

There was a return to the plan of county assessors in 1845. The term of office remained as before, and the duties are perhaps sufficiently defined in the acts already mentioned. The county assessor was authorized, however, to appoint a deputy, who must meet the requirements of the county commissioners; but the appointment of such a deputy was optional with the assessor.[163]

By the first law relative to the office of assessor, after Iowa became a State, enacted in February, 1847, the sheriff of the county was named assessor *ex officio*.[164] But by an act approved on January 22, 1853, the township was again made the unit for assessments. This was, indeed, substantially a reënactment of a former statute, for the term of the assessor remained at one year, and the bond and compensation were unchanged. It may be noted, however, that the county judge now occupied the place of the former board of county commissioners, and in so far as the assessor was a precinct officer the judge must approve his bonds and fill vacancies in the office.

There does appear, however, a new feature in the act of 1853, which required the assessors of the several townships or precincts, as the case might be, to present themselves at the office of the county judge on the third Monday in April, annually, and there as a board to classify the various kinds of property to be assessed. This seems to have been preliminary to the assessment, which

followed not later than the fourth Monday in April. Then, on the first Monday in July they were required to meet again under the same conditions as a board, and "in conjunction with the county judge" equalize the assessments previously made. This statute provided, also, that wherever in the *Code of 1851* the term "county assessor" appeared it should thereafter read "township assessor".[165]

Another cycle was begun in 1857 when the assessor again became a county officer to be chosen by the county electors for two years and to be required to give bond at five thousand dollars. He was not, however, authorized by this act to appoint his own deputy or deputies, since this power was now exercised by the county judge, who was, it appears, in most matters all-powerful. But by this legislation the compensation of the assessor was increased to two and one-half dollars per day for actual service.[166]

The revenue law of 1858 readjusted the system by making the assessor once more a township officer to be elected for a term of one year. In many respects the law of 1853 supplied the provisions of the statute of 1858. Bonds in the sum of five hundred dollars filed with the trustees, or in the case of precincts, with the county judge were required; while the compensation was placed at two dollars per day. The meeting of the several assessors at the office of the county judge was again required; but such meeting must occur on the second Monday of January, while the duties were defined as in the former law but in greater detail. A second meeting of all assessors of the county was provided for on the last Saturday of March annually, for the specific purpose of "completing assessments" and of making returns of lands or

property assessed in the townships of the owners but lying in other townships in the same county.[167]

If one may judge from the various statutes governing the duties of the assessor, it has been the opinion of lawmakers that for first-hand information the assessor was in a position to obtain what was desired. For this reason it appears that a constantly increasing number of important duties were thrust upon the office. A knowledge of the population, simply as to numbers, was of course essential; and so the first census was provided for in 1844 when the county, township, or precinct assessor, as the case might be, was required to secure a list of all the white inhabitants not only in his own local district but in any adjoining county wherein no assessor had been chosen. Neither did the assessor's duty cease until he had certified the result to the clerk of the county commissioners. A penalty was attached to a failure to carry out the provisions of the law, whereby the guilty officer became subject to a fine up to three hundred dollars.[168]

When the office of assessor returned to the township electors, as provided in 1858, an act relative to the enumeration of the inhabitants required the assessor of the township, commencing with 1859, to perform this duty at the time of making the property assessments. Moreover, the taking of such an enumeration was required for the years 1863, 1865, 1867, 1869, 1875, and every ten years thereafter. All these returns were to be filed with the clerk of the district court within a limited period.[169] The information secured through the township assessor was meager when compared with the data collected in accordance with later requirements relative to the taking of the census, or other acts involving statistics.

It was not until 1861 that the demands of the militia law as amended made it the duty of the assessor to list annually the persons subject to military duty and to certify the same to the district court as in the case of other enumerations. Severe penalties, moreover, were provided at that date for any willful failure to perform the duties prescribed by the law. These extended to a heavy fine, with removal from office and a possible disqualification for holding any office for a period of four years following. This statute appears to have been purely a war measure.[170]

Nor did the listing of persons subject to military duty conclude the activities of the assessor as a consequence of war; for in 1864 the law required the listing by the assessor of such citizens as were then in the service of the United States and who had families within the township. The listing included, also, the families of others who had died, or were disabled in the service. The information thus collected was returned to the county board of supervisors on regulation forms furnished by the county authorities.[171]

When the war had closed the State required that an enumeration of all the children of deceased soldiers be taken by each township assessor before the first Monday in June, 1866, and annually for two years thereafter.[172] Another demand made upon the assessor, which has to do with war records, appears in the laws of 1884, which required a list of all former soldiers and sailors of the War of 1812, the Mexican War, and the War of the Rebellion to be made. The information desired is specified in the law.[173] Finally, in 1911 all "soldiers, sailors [and] widows" who are allowed exemptions on tax assessment, as the law provides, must be separately enumerated by

the township assessor and returns made to the county auditor as in other cases.[174]

Another special enumeration during this period was the one of 1868 arising out of the registry law as effective in the township. The assessor under that act was required to record annually the names and places of residence of all voters in the township, either actual or prospective, on or before July 1st of each year.[175] Then annually after 1909 it became his duty to "record the names, ages, sex and postoffice address of all deaf and blind persons who reside within his jurisdiction".[176]

Commencing with 1862 the tendency has been toward the separation of the affairs of the township as included within an incorporated town from those of the outlying territory. The duties of the township assessor were in 1862 limited to the area "exclusive of the territory of such city or incorporated town", and by the same act his compensation was reduced to one dollar and fifty cents per day.[177] An amendment of 1872, moreover, made his election depend upon the votes of the electors without the district included in the incorporated town, while the previous law did not make this definite statement.[178] Another amendment, added in 1876, gave authority to the incorporated town when composed of fractions of two or more townships to provide for an assessor for the territory included, to which such an assessor's duties were thereafter limited.[179] All these acts were repealed, however, in 1882 and a substitute enacted, combining the features of the previous acts relative to the separation of jurisdictions and providing for a term of two years. A provision appears, furthermore, governing the assessors of incorporated towns, which is similar to that included in the law of 1853 whereby the township assessors were

required to meet as an equalizing board — but this provision applied only where more than one assessor was chosen in the town.[180]

It was in 1866 that some system entered into the forms used in the assessment of real estate. Under the act of this year it became the duty of the clerk of the board of supervisors, a function soon afterward of the county auditor, to furnish the township assessor with a plat of all lands in his township upon which he was required to place a valuation, and then return the same to the clerk of the county board. This, it appears, was the assessor's part in a general plan to preserve the exact records of real estate.[181] In harmony with this law another statute appears in 1872 by which the assessor was empowered to cause the survey and the platting of tracts of less than forty acres, where such units of the government survey had been subdivided. Indeed, the assessor was compelled by the law to secure such a survey and such a record in order to perfect the assessment, and should the owner refuse he was empowered to proceed upon his own motion to cause the same to be made and thereafter to add the costs to the assessment. Moreover, where the property of non-residents was concerned notice of action was unnecessary. He could then proceed at once and his duties and returns were not considered complete, and no compensation was due him, until all such required acts were performed and the records returned.[182]

When the law of 1868 providing for tax exemptions for "one or more acres of forest trees for timber" became effective, it devolved upon the township assessor to make due return of such claims. The person complying with the law must show "to the satisfaction of the assessor" of his own township that his claims were sufficient.

An appeal lay, however, to the county board in the event of dissatisfaction with the decision of the assessor. A similar enactment in 1906 regarding "forest and fruit tree reservation" required the assessor to secure the sworn statement or affirmation of all persons making application for such exemptions.[183]

The importance of data relative to crops and live stock led, in 1892, to placing among the duties of the assessor the collection of such information. This was a requirement for each odd-numbered year, or it was to be taken at the time of assessing real estate.[184]

The provisions of the *Code of 1897* relating to the census were amended in 1904, and thereafter the number of items which were required relative to population and statistics of agricultural products was largely increased. The act appears to combine the provisions of previous acts which required the assessor to perform certain duties of this character. The responsibility for enforcing the collection of such data rested as to expenses with the county; while the State authorities might, in case of failure and delay, enter into any township or division thereof and "cause such census to be made".[185]

In 1909 "crop statistics" became annual requirements, and to that extent increased the duties of the township assessor, who is now required to secure the necessary information from each resident of his township whose property is listed, which data is incorporated in the reports of the Secretary of the State Board of Agriculture. Before the fifteenth day of April of each year such report blanks as are furnished to the assessor must be filled out as required by law and placed in the hands of the county auditor.[186]

When the local board of equalization was first pro-

vided for in 1870, the assessor was required to be present and to make all corrections upon the assessment rolls. Although the township clerk acted in his usual capacity, the assessor was placed in charge of the assessment lists and then required to read each item consecutively, checking such lists as the board proceeded through the record with which he was personally concerned. He became responsible, also, to the board of review for the methods employed in making his assessments; and by them he might be summoned for an "examination" with reference thereto. It became, furthermore, a misdemeanor and was punishable accordingly for any assessor to refuse to obey any summons of this nature.[187]

By the *Code of 1897* the assessors of the several townships are required to assemble at the call of the county auditor in order to receive instructions relative to their duties, which begin immediately following the second Monday in January. For attendance upon a meeting of this character the compensation for one day of eight hours is to be allowed. This can not be greater than two dollars, but shall be such as may be determined upon by the county supervisors. Mileage allowance at the rate of six cents for one way is a feature which is not found heretofore in any act providing for compensation.[188]

With the enactment of the so-called Mulct Tax Law, approved on March 29, 1894, the assessor was charged with a new obligation in that he was required to report a list of all places coming under this statute four times in each year. Furthermore, a failure to comply with all the provisions of the law subjected the offender to suspension or removal from office by the "district court or any judge thereof". An amendment of 1902 contained an added

requirement as to the necessary notice which the assessor must furnish before listing such property for the special tax.[189]

The assessment of corporation property, the discovery of the ownership of stocks, and the adjustment of taxes relative to public service organizations were not questions of serious proportions until after the railways had entered the State. It is true, however, that previously some provision was made for the assessment of partnerships, as is illustrated in the following section from a law approved in 1844:

> Partners in the mercantile or other business, whether residing in the same or different townships or precincts, may be jointly taxed under their partnership name, in the township or precinct where their business is carried on, for all the personal property employed in such business; and if they have places of business in two or more townships or precincts, they shall be taxed in those several townships or precincts for the proportions of property employed in such townships or precincts respectively.[190]

At this time the assessor was a township or precinct officer and it became his duty to list such property. Again, in 1847 "partners in mercantile or other business" might be jointly taxed "for all capital, personal and real property, employed in such business". The sheriff was then the assessor *ex officio*.[191]

It was not until 1851 that any mention appears to have been made of possible combinations of capital whereby the assessor might find difficulty in locating the ownership. The assessor, still a county officer, was instructed to require the "secretary or clerk", or any officer who acted in that relation to any such organization, to furnish him with "a list of the names and residences" of non-

resident stockholders, with the "number of shares of each and both the par value and the market value of such stock". It was further provided that if any officer, called upon to furnish such information, should refuse to comply the assessor should have authority to obtain the same "in the best manner" within his power, and in such cases to assess the shares of non-residents to the company. It may be noted in this connection that the corporations named at that date included companies constructing "canals, rail-ways, plank-roads, graded-roads, turnpike-roads, and similar improvements". In such cases the interests of non-residents were to be assessed in the county where "either terminus of the structure" was located; while the county first listing or assessing was to collect the tax thereon.[192]

The provisions of the *Code of 1851,* as outlined in the previous paragraph, appear to have been included in an act in relation to revenue approved on March 23, 1858. In this statute the Code provisions were not changed except that the shares of non-residents were required to be assessed in the county "in which is situated their principal business within this State." By this act the assessor became a township officer, and it is clear that he would have the same jurisdiction within the township as the county assessor named in the previous law.[193]

Upon the creation of the national bank the law of the State added a new duty to the already numerous list of functions of the township assessor. All shares of these organizations were now to be assessed "in the township, incorporated town, or city" where located, whether or not the shareholder resided therein. By this law, which was approved on April 2, 1866, the principal accounting officer was required to furnish the township assessor with

the names of persons owning shares in such corporations and the amount owned by each. Furthermore, the corporation, or association as it was termed, became liable for the tax, and the assessor was not now required to obtain the information "in the best manner" within his power.[194]

During the decade following 1856 the question of the assessment and taxation of railroads, telegraph, and express companies became a serious subject for the lawmakers. The provisions for the assessment of other corporations applied to the railroads locally, as it appears from the statutes, until 1862. Thereafter the local assessor ceased to have any responsibility in the matter generally, such assessment having been placed in the hands of State authorities. He was required, however, by the act of 1862 to attend to the listing of any property, personal or real estate, not included in "road-bed, track, rolling stock, and necessary buildings" of the road.[195]

In 1868 the assessment of telegraph and express companies was regulated by a law especially applicable to them. The local assessor was required thereafter to include the property of whatever nature belonging to such corporations "in the valuation of the personal property of such company or body corporate in the assessment of taxes in the township, incorporated town, or city" where such a company maintained an office. The agent in charge, moreover, was directed by the law — without personal penalty — to furnish the requisite information regarding "gross receipts" to the assessor of the local jurisdiction. Here again the listing officer, in case of failure to obtain the information by other means, was expected "to ascertain as near as may be" the amount of gross receipts of the local office and thereupon to make

his assessment according to law.[196] In 1878, however, the assessment of telegraph lines was placed under the control of State authorities,[197] and by an act in 1896, the assessor was relieved of his responsibility in the assessment of the receipts of express companies.[198]

The extremes of penalty for failure to qualify or to perform the duties which the law defined, the rise and fall in the amount of security required and of compensation allowed, or the increase in the authority granted the officer in making his assessment, all of which topics have been referred to heretofore, may be briefly summarized. From no penalty to the small amount of five dollars for failure to qualify the change is not marked; from no penalty to five hundred dollars for failure to perform his duties according to law is more noticeable; while the provisions of a recent law (1894) extending the penalty to a possible removal from office appears out of the ordinary when compared to any previous act — excepting that of 1861 relating to the militia, when disqualification for office for four years was the penalty for failure to return a list of those subject to military duty. The compensation, either fixed by law or limited generally thereby, has varied in amount from an allowance according to the discretion of the county board, with hours not specified, to two and one-half dollars per day for eight hours for all townships. For those townships containing a population of thirty thousand, and under special conditions, four dollars per day was permitted by a law of 1909, which appears to be the last act upon the subject.[199] Finally, from being compelled to obtain his information in the best manner possible, penalties and measures intended to aid the assessor in securing data have been from time to time incorporated in the statutes.[200]

VIII

THE TOWNSHIP COLLECTOR

A COLLECTOR of taxes for each township was provided for in the laws of the Territory of Michigan in 1827. Like other officers of the township he was elected for one year, and in order to qualify he was required to furnish the security specified by law.[201] His duties, implied in his title, began upon the receipt of the assessment roll and the warrant to proceed with the collection of the township taxes. After deducting five per cent of his collections for his compensation the balance of the funds must be paid to the supervisor of the township, to the overseers of the poor, or to the county treasurer, in accordance with the requirements named in the warrant. He was furthermore authorized to offer property at public sale in the event of refusal on the part of the assessed person to pay the tax due.[202]

In 1833 the township supervisor was required to determine what particular duty should be assigned to each collector when more than one such officer was chosen in a township. Under this law of 1833, which was in force when the Iowa country became a part of Michigan Territory, the collector settled with the county treasurer.[203] He did not collect the Territorial tax: this was the duty of the sheriff, and for such taxes the county was the unit.[204] This explains the action of the Board of Supervisors of Dubuque County as recorded in their first order at the session of Friday, May 13, 1836, wherein the treas-

urer was charged with the Territorial tax as levied upon that county and was ordered to "settle with the sheriff".[205] As a single township the remaining tax would be collected in the usual manner, and the treasurer would settle with the collector.

While the Iowa country was under the jurisdiction of the original Territory of Wisconsin a law of January, 1838, provided that the sheriff of the county should become the collector of taxes.[206] In January, 1839, the Territorial legislature of Iowa enacted a statute relating to revenue in which the sheriff likewise was made the collector of all taxes.[207] Later, in 1842, the constable was made the collector of township taxes.[208] Then, by the revenue law of 1844, the county treasurer became the collector of all taxes, and for this purpose he or his deputy was required to visit each township to receive payment at some definite place as announced through public notice.[209]

The term "township collector", as used in the statutes, does not appear again until in 1868, when the Twelfth General Assembly passed an act providing for such an officer. If by a majority of two-thirds the county board of supervisors in counties of four thousand or more population should order the election of the collector in accordance with the provisions of the law, each township was required to follow the order by electing a collector annually.

In counties adopting this system the collector, having qualified and received the duplicate tax list from the county treasurer, was directed by the statute to post notices in each school district and city ward, as well as to advertise in local papers that such tax list had been received, and that he would be located at some convenient

place from nine in the morning until four in the afternoon "at least once each week" for the purpose of receiving payment. Moreover, these hours were to be the same until March 1st in each year. After that date the collector was required to make at least one personal call upon all the individuals whose taxes remained unpaid, in order to make a personal demand.

The collector was authorized to seize any property which the owner might attempt to remove from the township without first paying the taxes thereon, or to collect by force, if necessary, any tax due upon property already removed but which might be found within the limits of the county. A report of the amounts collected from month to month was also a function of the collector; and all his duties must be completed and settlements made before the first Monday in May following the commencement of his collections in January.

Having furnished sufficient bonds to the county board, he was held responsible for all losses by "theft or otherwise" which might occur during the discharge of his duties; while his compensation depended upon the amount collected, being fixed at two per cent on all sums up to two thousand dollars and one per cent thereafter. If, however, he was required to seize and sell property, five per cent was added for his compensation and was levied upon the delinquent taxpayer.[210]

By a provision of the *Code of 1873,* however, the county must contain a population of at least seven thousand before township collectors could be elected under orders from the county board of supervisors; while an act of 1884 declared that thereafter no demand should be made for taxes, thereby repealing all laws relative to the township collector.[211]

IX

THE TOWNSHIP TREASURER

In the early history of Ohio a treasurer was elected in the "original surveyed township" to care for the funds arising from the leasing of school or church lands[212] and in 1831 the laws provided for a general treasurer for the civil township.[213] The statutes of the Territory of Michigan in 1829 authorized the electors of the township to choose a township treasurer, who with five directors chosen at the same time should form a board for the care of the poor. In this instance his functions were limited to the care of the poor fund — and this appears to be the only reason for his election. To the board of directors he must furnish a bond for the faithful performance of his duties; and should he fail "to comply with and enter upon the duties" of his office within a limited time he became subject to a fine of "twenty dollars for the use of the poor of the township".[214] A general township treasurer, however, does not appear among township officers in either the Territory of Michigan or the original Territory of Wisconsin during the period when the Iowa country was under their jurisdiction.

The first act (1840) relating to townships in the legislation of the Territory of Iowa included a treasurer among the township officers. His term of service was implied in the "annual election" but his duties were not defined in this law. Nor were they prescribed until the same subject was acted upon in 1842, when he was re-

quired to give a suitable bond to the trustees to insure the performance of his duty in receiving and paying over all money which might come into his hands. As compensation for his services he was allowed to retain three per cent of all sums for which he became responsible, and payments were made by him only on the authority and order of the township trustees.[215] This appears to have been the status of the township treasurer when Iowa became a State in 1846.

The *Code of 1851* makes no provision for a township treasurer. Indeed, the county appears to have had such control over fiscal affairs at that time that there was no need of such an officer. In 1853, however, when the township was permitted to assume some authority over roads and highways, the township clerk was designated as the officer responsible for the care of the road fund.[216] His duties in that relation have been discussed in connection with the office of clerk and, to some extent also, under the head of roads. Probably all townships which were organized under the act approved on February 17, 1842, elected a treasurer. The local records of the individual townships from 1842 to 1851 would alone throw light upon this question.

X

THE JUSTICE OF THE PEACE

Upon the organization of the Territory of the Northwest it appears that the first statute enacted by the Governor and Judges made provision for "regulating and establishing the militia"; while the second statute provided for a court of "general quarter sessions of the peace" and for "a competent number of justices of the peace in every of the counties", all of whom were to be appointed and commissioned by the Governor.[217]

From the use of the term "court" as here indicated the expression "county court" is frequently found long after the "quarter sessions of the peace" had ceased to be a part of the local government in the Territories formed from the original Territory of the Northwest.[218] The justice of the peace, however, continued to represent the judicial branch of the government wherever settlements were made — the number appointed depending to some extent upon the needs of the community. The appointing of justices remained in the hands of the Governor until provision was made for elections in precincts or townships as the laws might determine.

After the admission of Ohio in 1803, and the subsequent organization of townships, it appears that a "proper number" of justices of the peace were assigned to each township to be elected by the people; and when chosen they were to continue in office for three years.[219] After 1803 the office of justice of the peace continued to

be an elective one in the State of Ohio.[220] Nevertheless, in the statutes of the Territory of Michigan and the original Territory of Wisconsin, which laws were later extended over the Territory of Iowa, the office of justice of the peace in no instance appears to have been under the control of the electors.[221] In 1834 when the Iowa country became a part of Michigan Territory for the purposes of temporary government the powers of the justice were as defined in a statute of 1833.[222] These powers were limited to minor civil matters and misdemeanors, for the justice was primarily a peace officer. Under certain restrictions, defined in the statute, cases might be appealed to the higher courts. Compensation was in the form of fees, varying from six and one-fourth cents for the entry of a verdict to one dollar and a half for performing a marriage ceremony.

It appears then that the justice of the peace was regarded as a county officer; and according to the Organic Act and laws of the original Territory of Wisconsin he was so continued, since no change is recorded in the laws of Michigan as extended over the Wisconsin Territory until 1838. It was then provided that there should be appointed in each organized county as many justices of the peace as in the opinion of the Governor the good of the public and the wants of the people might demand. The term of service was fixed at four years, and resignations must be addressed to the Governor or the Secretary of the Territory. No person other than a citizen of the United States who had resided in the Territory for twelve months and in the county for six months was eligible to the office.[223]

While by the act of 1838 the justice of the peace was appointed by the Governor, his residence and jurisdic-

tion were limited, for upon removal from the township in which he was appointed he became for that reason disqualified, and was thereupon required to surrender all his dockets, books, and documents to the nearest justice in the same township. Every justice, however, had jurisdiction coextensive with the county so long as qualified by residence in the township as stated. If a case should arise in a township where there was no qualified justice, or if all were interested in the case, then the trial might proceed before some justice in an adjoining township.[224] In every instance, it appears, the law aimed to bring the means of securing justice within easy reach of the people, and also to provide for an agency or authority that might prevent disorder in the community.

The first act of the Territorial legislature of Iowa relative to the justice of the peace was a reënactment of the Wisconsin law of 1838, excepting in a very few particulars. By the Iowa statute the justice was not disqualified except upon his removal from the county. In that event he must deliver his records and documents to the nearest justice in that county. Moreover, his term of office was by the Iowa law fixed at three years.[225]

Again, by an act approved on January 14, 1840, the Territorial legislature of Iowa provided that "hereafter in every township organized by law in any county in this territory, there shall be elected two justices of the peace" at the same time and in the same manner as other township officers. The one securing the highest number of votes under this act was declared elected for two years, and should there be a tie vote "the elder one shall have the priority". After the first election one justice was to be chosen annually for a term of two years. In counties not yet organized into townships justices were to be

elected by precincts in the same manner — provided that four might be chosen in the Burlington, Dubuque, and Fort Madison precincts, and three in the Farmington, West Point, Keosauqua, Bloomington, and Iowa City precincts. When counties containing precincts were divided into townships and justices were chosen according to the township plan noted above, those already in office should so continue until the expiration of the two years for which they were elected. Moreover, it was provided that thirty days after the election of justices in any township or precinct the office of justice of the peace "held by virtue of a commission from the governor, shall be deemed expired and at an end."[226]

The *Revision of 1843* required the justice to reside in the township or precinct for which he was elected during the time he continued in office; and no person other than a citizen of the United States, who had resided in the county for "six months next before his election", was to be eligible to such an office. And when a township or precinct was divided for any reason and a justice of the original area should fall into the new township or precinct he should continue to discharge the duties of his office until the term for which he was chosen should expire. In the event of removal from the township or precinct he was required to surrender to the next nearest justice of the peace all his documents of whatever kind. The nature of his duties would be indicated in the "docket" which the law directed him to keep.[227]

In 1844 the laws of the Territory of Iowa declared that "every action cognizable before a justice of the peace, instituted by summons, shall be brought before some justice of the peace of the township or precinct where the defendant resides", provided there was a jus-

tice duly qualified in that district. This act contained a provision that the four justices formerly allowed to certain special precincts named above — now formed into townships — should be reduced to three, while an additional justice was allowed to Linn Township, Cedar County, who should reside on the west side of the Cedar River in that county. This provision was due to the inconveniences arising to settlers residing west of the river who were without the services of a justice. Under township organization the justice was required to pay all moneys that came into his hands to the township treasurer or, where the precinct system was retained, to the county treasurer.[228]

There does not appear to have been any further legislation relating directly to the office of the justice of the peace until the adoption of the *Code of 1851*. It was then provided that for all purposes, except that of election, the justice was to be regarded as a county officer. In effect this had been true before, even though it was not so stated. Two justices were to be chosen in each township; but when an incorporated town lay within the township boundaries, the trustees had power by giving due notice, to provide for "one or two additional justices".[229] The county judge must approve the bonds of the justices in his county, and the *Code of 1851* prescribed the amount of five hundred dollars as a minimum for the security offered by a justice. In all his proceedings the justice was directed to act as his own clerk.[230] These regulations governing the justice in the township were declared to apply also to those elected in precincts.[231]

The *Code of 1851* defined the territorial jurisdiction of the justice "when not specially restricted" to be "geographically coextensive" with the county. In law it

extended, within prescribed limits, to cases of a civil nature where the amount in controversy did not exceed one hundred dollars; and this, by agreement, might be extended to any amount "not exceeding five hundred dollars". The *Code of 1873,* however, did not give the justice jurisdiction coextensive with his county where the suit was against an actual resident of another county, except "on written contracts, stipulating for payment at a particular place". In the latter instance suit might be brought in the township, and therefore before the justice where the payment was to be made.[232]

While the statutory provisions governing procedure in the court of the justice of the peace are beyond the scope of this discussion it may be noted that he has been assigned new duties as legislation has been enacted to meet new conditions. For instance, he may be required to act with the State Veterinary Surgeon in appraising the value of diseased stock, and in case of disagreement a second justice may be called to act as "umpire", their decision being final when the value does not exceed one hundred dollars.[233] Again, by an act of 1911 he is authorized, on complaint of any citizen, to decide what constitutes an obstruction of the highway.[234]

The compensation of the justice of the peace has always been in the form of fees in all instances until in recent years. In 1894 an act "limiting the compensation of justices of the peace and constables" in townships required the justice, when the total fees amounted to more than one hundred and fifty dollars, to report quarterly to the board of county supervisors. In other townships where the fees were of a less amount than one hundred and fifty dollars reports were required annually. In townships having a population of four thousand or

less, all fees above six hundred dollars must be paid to the county treasurer; where the population was above four and under ten thousand the allowance was eight hundred dollars per annum, provided this amount was collected in fees; in townships containing from ten to twenty thousand people one thousand dollars in fees might be retained; where the census showed a population of from twenty to thirty thousand, twelve hundred dollars was the limit; and in townships having above thirty thousand population the maximum compensation was fifteen hundred dollars.[235] An amendment in 1907 required the justices in townships of above twenty-eight thousand population to turn in all criminal fees collected during the year; and they were to be paid a fixed salary while being permitted to retain a certain portion of the fees in civil cases "for expenses of their offices actually incurred", but this amount could not exceed five hundred dollars per annum.[236] These provisions, however, apply only to cities; and while the law appears to be a general act the portion relating to fixed salaries does not affect the ordinary township.

XI

THE CONSTABLE

Originally, in the Territory of the Northwest, the constable was appointed by the court of general quarter sessions for each township in the county. He was both a township and a county officer, and as such was to "continue to serve as a constable of the township specially, as a constable of the county generally for the term of one year". By this law, passed in 1790, he was empowered to serve all "lawful precepts" directed to him specially and generally, and he was furthermore "to do and perform all duties and services incumbent on him as an officer of the township or county, or of the several courts of law" which might be held within his county.[237] An additional provision was made in 1799 for the appointment of "one or more respectable and confidential persons, in each and every township" to serve as constables for the term of one year, or until their successors had qualified by the proper oath; but in no instance were they obliged to serve for a longer period than three months beyond the expiration of their term of office, nor for more than one year in ten. In addition to the usual civil services the constable so appointed was "as far as in him lies, to apprehend and bring to justice, all felons and disturbers of the peace", and also to do those things necessary "to keep and preserve the peace within the county in which he shall have been appointed". Should the appointed officer fail to take the oath as required within

a period of eight days, or neglect to perform the duties of the office, a fine of twenty dollars might be collected in the name of any person who might sue for it, one-half of such fine to become the reward of the individual plaintiff. In the event of a vacancy in the office of constable, due to death, removal, or disqualification, the justice of the peace within the township was authorized to make an appointment.[238]

The Governor and Judges of the Territory of Michigan in their legislative capacity made provision for "a competent number of constables" in each of the judicial districts, who should "within their respective Districts, possess the same powers" and perform the same duties as the marshals of the district. They were also "liable to the same responsibility".[239] After the county commissioners had come into power in the Michigan Territory in 1818, they were later authorized (in 1820) to recommend to the Governor "such persons for constables in the respective townships, as they may deem proper". From the persons recommended the Governor was directed to appoint a suitable number.[240] Within the same year the Governor was authorized to appoint these officers for the county, their term of office being at his pleasure. The authority of the constable in this instance, in civil and criminal cases, was "coextensive with the counties" for which they were severally appointed; and within this jurisdiction they became, moreover, the "ministerial officers of justices of the peace" in addition to performing their general police duties.[241]

In 1825 constables in the Territory of Michigan were chosen by the electors of the county, the number being determined by the justices of the county courts at least thirty days "previous to any annual election". These

courts also determined "the townships or other divisions of the counties in which such constables" should reside. The term of office as fixed by the act of 1825 was one year; and the duties, powers, and penalties were the same as previously provided; while the incumbent was subject to removal by the justices of the county court.[242]

Two years later, in 1827, constables were elected at the same time as other township officers. There were to be as many as "to the electors of the same township so met [in town meeting], or the major part of them, shall seem necessary and convenient". They should serve for one year; and any failure to comply with the requirements of the law relative to the assuming of the office made the one so offending subject to a fine of fifteen dollars.[243]

From the time of the organization of the original Territory of Wisconsin (1836) until 1838, the laws of Michigan Territory relative to township officers appear to have been in force in the Iowa country. In 1838, however, it was provided that in certain townships recently set off and established "any number of constables, not exceeding three" might be chosen in each town (township), except that in those towns where seats of justice were located the limit was placed at four.[244]

The first act of the Legislative Assembly of the Territory of Iowa concerning the office of constable, approved on January 24, 1839, provided for his election annually in each of the organized counties in the Territory, the number being determined by the "number of magistrates appointed in each county". The filling of vacancies was to be provided for by the county commissioners. Like the justice of the peace, the constable was to be paid for his services in fees upon the execution of his duties in

individual cases.[245] In 1840 the law providing for the organization of townships authorized the election of two constables in the same manner as other township officers were chosen, and they were required to execute the instructions of the electors regarding the preservation of order in the annual township meeting.[246]

By the statute of 1842, providing for the organization of townships, the constable became the collector of taxes, and as such was required to furnish suitable bonds to be approved by the township trustees and filed with the township treasurer. To perform the service of tax collector he was allowed four months, and failure to comply with these regulations subjected him to a penalty of twenty per cent of his bond as damages; while his compensation for collecting the tax was equivalent to that of the county collector (the sheriff) at the same time. A further duty of the constable related to the town meeting, which he was commanded to call on the authority of a warrant issued by the trustees.[247]

As amendatory to the law of 1839 it was provided in 1844 that the constable should file his bond with the township clerk, instead of with the township treasurer, or, where counties were not yet organized into townships, with the clerk of the county commissioners. It was further stipulated that "any person or persons, bodies politic or corporate" that should suffer injury through any act of a constable while in his official capacity might recover on his bond "for his or their benefit".[248] Again, in another statute of the same year there was a provision that the "jurisdiction of constables, as conservators of the peace and executive officers" should be coextensive with that of justices of the peace of the townships or precincts for which they were elected.[249] In 1846 the

term of office was extended to two years "in all of the townships and precincts"; and this appears to have been the status of the constable when Iowa became a State.[250]

In 1851 the law governing the selection of constables, as contained in the Code, made slight changes in his relation to the township. Two constables were to be chosen at the election; and if considered necessary by the trustees they might authorize the election of two more; and when an incorporated town was located in any township — which was the chief reason it seems for the additional number — two must reside in the town. Constables were again declared to be "ministerial officers of justices of the peace", and they were under orders to attend the district court when so notified by the sheriff. They were subject, also, to the orders of the clerk or the trustees of the township in all matters within the requirements of the law. This illustrates the relation of the constable to both the township and the county and suggests the reason for his being considered a county officer inasmuch as he was an officer of the courts.[251]

Any person of suitable age might be called upon by a justice, who should make his appointment in writing, to perform the duties of a constable. No fees, however, were allowed for such service; while the appointee was bound by all the obligations of a constable legally elected.[252] The compensation of the constable continued to be paid in fees, varying according to the *Code of 1851* from five to fifty cents as applied to no less than fifteen specific acts.[253]

It is apparent that the intention of the law in every instance aimed at the accommodation of local needs, and therefore special acts providing for additional justices of the peace and constables were frequent. Certain town-

ships were named in the acts and the place of residence of the additional constable is stated, which makes it clear that the laws were intended to meet local demands.[254]

According to the *Code of 1873* the constable was to be elected for two years, but his functions remained substantially the same. Indeed, there appears to have been no marked differences in his status during the period included in this chapter excepting in the method of his selection — which was by appointment directly by the executive of the Territory, or by election by the county, and later by the township, electors.

Recent legislation, however, has dealt with the constable's compensation, both as to the amount and the manner of payment. While he continues to receive definite legal fees for his services in most cases, the law now requires him to report them and in some instances turn all of them into the county treasury. In other instances only all fees above an amount determined in proportion to the population of his township must be so delivered. In other words, the constable's compensation is limited to a certain amount to be collected in fees, and therefore such compensation may or may not reach the limit fixed by law. The first act of this nature, passed in 1894, was amended in 1907 so that in townships of a given population a definite salary was to be paid, all fees of whatever kind being turned into the treasury, while the provisions of the former act remained in force in other townships. Another amendment, made in 1909, reduced the proportion of population in its relation to the amount of compensation to be paid from the treasury or retained in fees; but this act made no change in the reports which are required to be made to the county board by each constable in the township.[255]

XII

THE FENCE VIEWER

The office of fence viewer was established in the Territory of the Northwest in 1799. By an act of the General Assembly of that Territory it was provided that "for the better ascertaining and regulating of partition fences", the court of general quarter sessions of the peace should in each year appoint three honest and able men for each township. The duty of these officers, as implied in their title, was to view all fences "about which any difference may happen or arise". They were, moreover, the sole judges of the sufficiency of these improvements and of the charges to be borne by any one who was found delinquent.[256]

In 1827 the laws of the Territory of Michigan provided that the number of fence viewers should be determined by the electors in the township, but their duties appear to have been the same as under the statute of 1799.[257] In 1833 the fence viewers were empowered to appraise the damages caused by any domestic animal running at large, if the person damaged called upon them for such service; and having made their assessment they were directed to return in writing the amount of the same with their charges. Should any dispute arise concerning drainage ditches, as to direction, proportion of work, expense, depth, length, or even of the necessity of such drainage, it was also within the power of the fence viewers to pass final judgment regarding the matter.[258] Or if

damages should result from the neglect of any party to make such an improvement the fence viewers were authorized to assess the same.

The Michigan statute of 1833 relative to fence viewers appears to have been in force in the Iowa country during the period from September, 1834, to 1836, while this country was attached to Michigan Territory, and also while it was under the jurisdiction of the original Territory of Wisconsin from 1836 to 1838. In the first law affecting townships passed by the Legislative Assembly of the Territory of Iowa in 1840, among the officers named were two fence viewers.[259] Again, according to the law approved on February 17, 1842, three fence viewers were to be chosen at the annual township meeting.[260] In the first of these acts their duties were not specified, and it is concluded that they must have been the same as those found in the Michigan statute so far as applicable to local conditions. The term of office of the fence viewer continued until his successor had qualified. Exemption from labor upon the roads appears to have been the only compensation allowed for his public service; while service rendered to individuals was paid for in accordance with specific provisions of the law.

It was not until 1842 that the duties of the fence viewer were specifically defined in an act regulating fences, which provided that when damages were caused to the property of any landowner through the trespass of animals he might appeal to the fence viewers to assess the same or, if there were none, to a justice of the peace who should appoint two householders to perform the duty. For services of this nature the compensation of the fence viewers, or those appointed, was fixed at fifty cents per day; and a penalty of not to exceed two dollars

fine might be inflicted for failure to serve.[261] That the law was drawn from the statutes of Ohio is evident from the comparison below. While the four sections contained in the Ohio statute were adopted, the first section is sufficient to illustrate the similarity and show the changes necessary to adapt the law to conditions in Iowa. Furthermore, an additional clause is found in section four of the Iowa statute which made provision for counties where townships were not yet organized; while an additional section became necessary to meet the situation referred to above where no fence viewers were qualified to act. The provision relating to a fine as indicated in the first section of the Ohio law was repeated in the fourth section and is there adopted in the Iowa statute.

The Ohio Statute

Sec. 1. That if any horse, mare, mule or ass, or any cattle, hogs, sheep or goats, shall break into any grounds, being inclosed with a strong and sound worm fence sufficiently staked and ridered, or locked at each joint, five feet six inches high, or with strong post and rails or posts and pailings [palings] five feet high, or with a hedge two feet high, upon a ditch three feet deep and three feet wide, or instead of such hedge, a rail fence of two feet and a half high, or with a fence five feet six inches high, composed of strong sound timber, put up in any

The Iowa Statute

Sec. 1. That if any horse, mare, mule or ass, or any cattle, hogs, sheep or goats, shall break into any ground being enclosed with a strong worm fence, sufficiently staked and ridered, or locked at each joint, five feet in height, or with strong post and rails, or post and pailings [palings] five feet high, or with a hedge two feet high upon a ditch three feet deep and three feet wide, or in stead of such hedge a rail fence three feet high, or with a sod fence three feet high, with a ditch on each side three feet wide and three feet deep, or a stone fence four feet high, or

other proper manner not herein particularly expressed, and the owner or occupier of such inclosure shall consider him or herself aggrieved thereby, the person so injured may apply to the fence-viewers of the township, who shall forthwith repair to the place where such injury was done, and there diligently examine such fence, and for refusal or neglect so to repair and examine as aforesaid, the fence-viewers shall respectively, be liable to a fine of two dollars, to be recovered on suit of the party injured.— From *Acts of the State of Ohio,* First Session, Third General Assembly, 1804–1805, p. 215.

with a fence five feet six inches high, composed of strong timber, put up in any other proper manner not herein particularly expressed, and the owner or occupier of such enclosure shall consider him or herself aggrieved thereby, the person so injured may apply to the fence viewers of the township, who shall forthwith repair to the place where such injury was done, and then diligently examine such fence.— From *Laws of the Territory of Iowa,* 1841–1842, pp. 11, 12.

By a law of 1844 the fence viewers were required to adjust disagreements relative to boundary fences when persons "aggrieved" requested such assistance; and in all such cases the conclusion of the viewers given in writing to each party was final. If any one of these officials refused to serve when called, a fine of three dollars might be imposed.[262] Finally, in 1845 the township trustees became *ex officio* overseers of the poor and fence viewers for their townships; and this act closed the history of the office as a separate institution in Iowa.[263] The procedure of the trustees while acting as fence viewers has been described above.

XIII

THE TOWNSHIP SUPERVISOR

The Territory of Michigan appears to have made no provision for township trustees; but in 1827 the Legislative Council authorized the electors in the township meeting to choose one supervisor who must be an inhabitant of the township.[264] According to the provisions of an act of 1833 this supervisor was required to receive and disburse all money that might be raised in his township for local purposes, except that raised for the poor. He was directed to keep "a just and true account" of these transactions and transmit the record thereof to his successor in office. It was his duty to meet with all other township supervisors in their capacity as a county board. As a member of the township auditing board he acted with the justices of the peace and the township clerk, and to him the latter two officers were required to render an accounting. He was required, also, upon the delivery of the assessment roll to present this document to the county board, returning a copy after correction to the township clerk for the use of the assessors during the following year.[265]

In the Territory of Wisconsin the township supervisor was retained.[266] In 1838, however, these supervisors were succeeded by county commissioners who assumed the duties heretofore performed by the township supervisors in their capacity as a county board.[267]

The system of representation in county government

by which the legal voters of each township selected one member of the board became effective in Iowa on July 4, 1860.[268] These representatives were called "supervisors", and they came from civil townships, but they were not township officers as were the "supervisors" of the Michigan and Wisconsin townships referred to above. Moreover, only ten years passed before this plan was changed (in 1870) to the district system, which has continued down to the present day.[269] According to this system the county is divided into from three to seven districts, from each of which one supervisor is elected to serve on the county board of supervisors.

XIV

THE TOWNSHIP BOARD

In accordance with the law of Michigan Territory enacted in 1828, the supervisor, the justices of the peace, and the township clerk acting together formed a board "to audit, examine and settle" annually all claims against the respective townships.[270] In 1830 these officers were constituted a board for the licensing of taverns in the several townships, possessing in this capacity an authority equivalent to that of the justices of the county court; and at specified times they were required to convene for such business.[271]

By an act approved in 1833 it was stipulated that before a license was issued the township board should be of the opinion that "a tavern is necessary at that place for the accommodation of travelers", and be satisfied also that the applicant was "of good moral character and of sufficient ability to keep a tavern". The board was authorized — if in their judgment it seemed proper — to "release the applicant from those provisions" which related to the proper supplies of "hay, stabling, pasturage, provender and grain."[272] This Michigan act of 1833 was in force in the Iowa country after 1834 and also in the original Territory of Wisconsin immediately following its organization in 1836.[273] But by an act of the Wisconsin Territorial legislature, approved on December 9, 1836, the power to issue such licenses as are named in the Michigan act of 1833 was delegated to the "super-

visors of each county".[274] Thus, the only period during which the law making provision for a township board was in force in the Iowa country extended from September, 1834, when the Iowa country was attached to Michigan Territory, to January 1, 1837, when the law of Wisconsin Territory became effective.

The township board as here described should not be confused with the board of trustees as found in the present Iowa township. Such a board consisted of various groups of officers having individual functions, but when acting collectively they possessed special powers which are foreign to any known experiences in the administration of Iowa townships. Indeed, no record of any such action in the township as provided for in the laws of Michigan and Wisconsin could be possible, unless perhaps in the original townships of Julien and Flint Hill.

XV

THE ROAD SUPERVISOR

By a statute of the Territory of the Northwest bearing the date of 1792 the court of general quarter sessions was authorized to order the supervisors of the highways in the various townships to open such roads as the justices might deem necessary and equitable and to require the assistance of the inhabitants in the labor thereon. That this provision might be effective the court was authorized to appoint a suitable number of supervisors of highways in each township.[275] A few years later another act made provision for the appointment of viewers from among the freeholders, and if objections were made to their conclusions reviewers should be selected. Thus it is apparent that the township was considered as a unit for the direction of road construction and repair, and that the citizens thereof were held responsible for certain public improvements. In 1799 road funds were made available through a levy upon the township by the county commissioners. In 1806, however, after Ohio became a State, the trustees were authorized to make such a levy.[276]

Upon the establishment of the Territory of Michigan in 1805 a provision, adopted from the laws of New York, gave the Governor authority to divide the Territory and "the permanent highways thereof, and all temporary existing roads" into such districts as he might think proper; and he was authorized to appoint supervisors over such districts as he might establish.[277]

In 1809, by the laws of the Territory of Michigan, highway districts were established on the authority of the judges of the district court, and a "surveyor of highways" was placed over each district.[278] It was not until 1817 that the county court of general quarter sessions was given authority over roads; and at the same time provision was made for the appointment of a supervisor of roads for each township by the Governor, upon the recommendations of this court. His term of office was "during the pleasure of the Governor"; and if any person appointed to this office should refuse to serve he became by such refusal subject to a fine of one hundred dollars.[279] Soon afterward provision was made for the division of the township into road districts under the direction of the county commissioners, who were to appoint "some respectable person" as supervisor in each district.[280]

Three "commissioners of highways" were to be elected in each township of the Territory of Michigan in accordance with an act passed in 1827. The duties of these officers included the repair, alteration, and control of roads generally, the direction of the overseers in their respective districts, the division of their townships annually into road districts, and the assigning of the inhabitants of the township to such districts according to their residence. They were also authorized to determine the number of days each taxpayer should labor upon the public roads under the direction of the overseer.[281] They were responsible to the township auditing board for an accounting "of the labor assessed and performed", and of money received by them, as well as for the improvements made upon roads and bridges. They were authorized likewise to certify to the township supervisor the

amount of the tax necessary for road improvements. In this instance failure to assume the duties of the office subjected the one so offending to a penalty of fifteen dollars.[282] Such was the law governing the management of highways in the Territory of Michigan in 1834 when the Iowa District was attached to that Territory.

During the period from 1836 to 1838 roads in the Iowa country were established according to the laws of Wisconsin Territory, which gave the county commissioners authority over all roads in the county. An act of January, 1838, provided that applications for new roads should be made by petition signed by "at least fifteen householders of the township or townships" through which the desired road was to pass. If any three electors in any township presented objections a review of the road should be ordered. It was provided, furthermore, that fifteen freeholders in any township might make application for the abandonment of any road in the event that its repair appeared to be an unreasonable burden to the township; while a Territorial road might be changed by petition from any landowner if accompanied by the signatures of fifteen householders of his township.[283]

By a law of the Territory of Iowa, approved on January 17, 1840, the county commissioners were authorized to "divide their respective counties or townships or any part thereof into suitable and convenient road districts, and cause a brief description of the same to be entered on the county or township records", which could be done not oftener than once each year. If townships were not yet organized the commissioners were empowered to appoint "a suitable number of supervisors", who were charged with the care of the roads and the collection of all road taxes and fines in their particular districts, and

who were required to pay all money into the hands of the township treasurer when the road supervisor was chosen by the township electors, and otherwise to the county treasurer. It was the duty of the supervisor to erect guide-posts at the forks of every Territorial or county road, and any person who should in any way disturb, "deface or obliterate any guide board or mile post" was subjected to severe penalties.

No citizen appointed or elected to the office of supervisor of roads could refuse to serve without becoming liable to a fine of from five to twenty-five dollars; while for his services as supervisor, above the three days required of him as a citizen of the road district, he was permitted to draw from the township treasury or the county treasury, as the case might be, one dollar per day. Then, at the time of settlement with the township trustees or county commissioners, the matter of handling any delinquency in service on his part was left to the discretion of those authorities.[284]

That the Iowa statute of 1840 was taken from the laws of Ohio is clearly seen in the following comparison of sections:

The Ohio Statute	*The Iowa Statute*
Section 1. That all male persons between twenty-one and sixty years of age, who have resided three months in this state, and who are not a township charge, shall be liable yearly and every year, to do and perform two days work on the public roads, under the direction of the supervisor with-	Section 1. . . . That all male persons between twenty-one and fifty years of age, who have resided one month in this territory, and who are not a county or township charge or otherwise exempt by law, shall be liable yearly and every year to do and perform three days work on the public roads, un-

in whose district they may respectively reside. — From Chase's *Statutes of Ohio,* Vol. III, p. 1855.

Sec. 3. That in case any person shall remove from one district to another, who has, prior to such removal, performed the whole or any part of the labor aforesaid, or in other respects has paid the whole or any part of the amount aforesaid, in lieu of such labor, and shall produce a certificate of the same from the supervisor of the proper district, such certificate shall be a complete discharge for the amount therein specified.— From Chase's *Statutes of Ohio,* Vol. III, p. 1856.

Sec. 4. That every person called upon to perform any labor upon the public roads and highways, under any of the provisions of this act, shall appear at the place appointed by the supervisor, at the hour of seven o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct; and the supervisor may, if necessary for the improvement of the roads, order any person owning the same, der the direction of the supervisor within whose district they may respectively reside.— From *Laws of the Territory of Iowa,* 1839–1840, p. 115.

Sec. 3. That in case any person shall remove from one district to another who has, prior to such removal, performed the whole or any part of the labor aforesaid, or in other respects has paid the whole or any part of the amount aforesaid in lieu of said labor, and shall produce a certificate of the same from the supervisors of the proper district, such certificate shall be a complete discharge for the amount therein specified.— From *Laws of the Territory of Iowa,* 1839–1840, p. 116.

Sec. 4. That every person called upon to perform any labor upon public roads and highways under any of the provisions of this act, shall appear at the place appointed by the supervisor, at the hour of eight o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct, and the supervisor may, if necessary for the improvement of the roads, order any person ow[n]ing the same to

to furnish a team of horses or oxen, and wagon, cart, scraper, or plough, to be employed or used on the roads, under the direction of said supervisor, who shall allow such person a reasonable compensation for the use of such team, wagon, cart, scraper, or plough, in discharge of any labor or tax due from said person. — From Chase's *Statutes of Ohio,* Vol. III, p. 1856.

Sec. 11. That each supervisor within his district shall erect and keep up, at the expense of the township, at the forks of every state and county road, a post and guide-board, or finger-board, containing an inscription in legible letters, directing the way and distance to the next town or towns, or public place or places situated on each road respectively.— From Chase's *Statutes of Ohio,* Vol. III, p. 1857.

Sec. 14. That any time during the year, when any public road shall be obstructed by the fall of timber, or any other cause, or any bridge shall be

furnish a team of horses or oxen, and wagon, cart, scraper, or plough, to be employed or used on the roads under the direction of said supervisor, who shall allow such person a reasonable compensation for the use of such team, wagon, cart, scraper, or plough in discharge of any labor due from said person.— From *Laws of the Territory of Iowa,* 1839–1840, p. 116.

Sec. 11. That each supervisor within his district shall erect and keep up, at the expense of the county, at the forks of every territorial or county road, a post and guide board or figure board, containing an inscription in legible letters, directing the way and distance to the next town or towns, or public place or places, situated on each road respectively; said post to be at least six inches in diameter, and not less than twelve feet high, and well set in the ground.— From *Laws of the Territory of Iowa,* 1839–1840, p. 118.

Sec. 12. That any time during the year when any public road shall be obstructed by the fall of timber or any other cause, or any bridge shall be

impaired, so that the passage of teams or travellers on said road or bridge shall be dangerous, and the supervisor in the district in which such obstruction or impaired bridge may exist, shall be notified of the same, it shall be his duty to cause such obstruction to be removed, or bridge repaired, forthwith; for which purpose he shall immediately order out such number of the inhabitants of his district as he may deem necessary to remove said obstructions, or repair said bridge.— From Chase's *Statutes of Ohio,* Vol. III, p. 1858.

impaired so that the passage of teams or travellers on said road or bridge shall be dangerous, and the supervisor in the district in which such obstruction or impaired bridge may exist, shall be notified of the same, it shall be his duty to cause such obstruction to be removed or bridge repaired forthwith, for which purpose he shall immediately order out such number of the inhabitants of his district as he may deem necessary to remove said obstructions or repair said bridge, and the persons so ordered out shall, after having had one day's notice to attend as aforesaid, be subject to the same restrictions and liable to the same penalties as if ordered out under the provisions of the second and fourth sections of this act.— From *Laws of the Territory of Iowa,* 1839–1840, p. 118.

Other sections of these statutes might be similarly compared. The only differences that appear are found in the modifications necessary to meet local conditions where the township system had not yet been fully organized. It will be noted that sections one to eleven inclusive treat of the same phases of the subject. Then two sections of the Ohio statute were passed over as being inapplicable to the Territory of Iowa at that time.

These provisions, however, appear in later acts relative to the care of roads and highways.

It was in 1842 that supervisors of roads were first authorized to purchase tools and equipment for the purposes of keeping roads in repair. In the law of that year, providing for the organization of townships, they were permitted to purchase for the exclusive use of "making and repairing roads" one scraper and the necessary ploughs.[285] Again, in the same year provision was made for a tax on real and personal property for road purposes, which, while levied by the county commissioners, fell to the road supervisor to collect or to "have the same worked out" on the basis of one dollar for each day's work. All money then received for road taxes by the supervisors went to the "making or repairing of bridges or improvement of roads" within his district. In accordance with the law of 1842, the time required from persons subject to road tax was reduced from three to two days.[286] An amendment which was approved in 1845 required the supervisor to file with the county treasurer a list of all delinquents in his district who had failed to pay or work out their road tax before November first of each year.[287]

There were no further amendments to or changes in the highway laws until the *Code of 1851* provided that the management of highways should be in the hands of a county officer called the supervisor of roads. It is apparent, however, that the township claimed some recognition inasmuch as this county officer was not only authorized but commanded to appoint in each organized township one deputy who should qualify by giving security to his principal, and for whose acts the principal, or county supervisor of roads, became responsible. It

was proper then that the term of the appointed deputy should be at the pleasure of the supervisor.

In all respects the duties of the deputy were to be determined by his superior officer; and the law provided that a notice served upon the subordinate officer was equivalent to notifying the principal. This, to be sure, was necessary since local interests could be served in no other way if emergencies should arise. Furthermore, the township deputy was required to regard himself as "an actual labouring hand", and his compensation, while limited to a maximum of one dollar and a half per day, should be no more than might be necessary to secure a competent person to fill such a position. In every instance the law required the county judge to approve whatever compensation was allowed the deputies.

A further provision authorized the supervisor, acting through his deputies, to procure the necessary material and equipment, which might include horses or oxen, to keep the roads in repair, and he must expend within the original surveyed township, or in any fractional part of the same, where any road lay, at least one-half the amount levied and collected upon real estate within the township for road purposes. Thereafter he was permitted — subject to the approval of the county judge — to expend the remainder in any part of the county, wherever it appeared to be most needed. If not so expended it must as nearly as practicable be laid out upon the roads in the township where levied. In other words, it appears that any surplus in the road fund was considered undesirable. Any individual preferring to work out any part of his personal property road tax in labor at the rate of one dollar per day should be permitted to do so, provided he first notified the deputy or supervisor, in

writing, of his intention before the time the tax became due.

Provision for extraordinary service is found in this law, which declared that all the able-bodied men of the township should be subject to the call of the county supervisor of roads; and in the case of extreme need in repairing roadways he was authorized to summon men from adjoining townships. If when so summoned any able-bodied man failed to appear as ordered and "labor diligently", either in person or by substitute, he became liable to a fine of ten dollars, which was to be added to the road fund. Under ordinary conditions the taxpayer could insist upon his right to labor on the roads not further than two miles from his place of residence; while in emergencies he could not plead any such limit. Any person laboring voluntarily upon the roads was, moreover, entitled to a certificate to that effect to be issued by the deputy road supervisor. These certificates were receivable at the office of the county treasurer for road taxes, either poll or personal, to the full amount of their face value, but only for the year in which they were issued.

Upon the adoption of this county plan — when the roads generally were controlled by the central authority in the county — the former office of district road supervisor as well as the former road districts were discontinued. The Census Board of the State, which may be compared to the present Executive Council, was empowered to add to this law supplementary regulations, which the county judge might adopt throughout the townships in his county if he deemed it advisable.[288]

The county plan of centralization in the control of road affairs was not, however, to continue. In 1853 the

General Assembly, by an act approved on January 22nd, gave such control to the townships as soon as they were organized. Again, the township trustees, meeting on the first Monday in March, were required to form road districts throughout their townships in such numbers as they considered "necessary for the public good". Only electors in the road districts as then established were permitted to vote for the supervisor, who must be a resident of the district for which he was elected. Refusal to furnish the necessary security and qualify according to notice subjected the legally elected officer to a penalty of five dollars, which as before became a part of the road fund; and his successor, after appointment by the township trustees, was authorized to proceed to collect the amount.

In many respects the functions outlined in previous statutes were incorporated in the law of 1853. The jurisdiction of the deputy described in the previous act corresponds to that of the local supervisor. He was expected, likewise, to perform "the same amount of labor as is required of an able bodied man", for which he was allowed by law the sum of one dollar per day, payable from the road fund in the hands of the township clerk and under regulations governing such payments. If no funds appeared to be available he was entitled to a certificate indicating such credit as he may have earned, over and above his own road tax, which amount was applicable at the office of the county treasurer upon his road tax for any succeeding year. The supervisor was allowed, also, a reasonable compensation, as the trustees might determine, for erecting guide-posts or guide-boards in his district. These guides were supposed to be placed at the forks of roads for the safety and conveni-

ence of the public; and such provisions, appearing in all the early laws relating to roads, are in the Iowa statutes now in force.

It was noted above that by the law of 1851 the county supervisor of roads had authority to purchase material and implements for the county road work. This may have included either horses or oxen; but whatever it may have comprehended in 1851, it was by the act of 1853 to be accounted for to the county judge before April 1st of that year. And all property thus coming into the hands of the county judge was thereafter to be distributed in a fairly equal manner among the several townships in his county.

The several district supervisors were directed to "keep the roads in as good condition as the funds at his disposal" would permit, and before October 15th of each year to make a report to the township trustees. This report must include the "amount of labor performed, the amount of money expended, and in what way expended", as well as a personal account of the time the officer was engaged "in the faithful discharge of his duties". Furthermore, the "condition of the roads in his district" formed a substantial item in his report.[289]

The statute of 1851 was amended in one particular in 1855, whereby increased authority was conferred upon the road supervisor. He was authorized now to bring suit against any individual who failed, after lawful warning of ten days, to appear and work out or pay his district road tax. Such a suit was, moreover, within the jurisdiction of any justice in the township, while a simple statement of the account was to be regarded as sufficient "cause of action".[290]

The law of 1858, relating to public roads and high-

ways, required the township trustees to designate the road districts in October, instead of in March as theretofore; and it appears that the duties of the supervisors of roads began as soon after their election on the second Tuesday in October as they were able to qualify. A penalty of five dollars was to be inflicted for failure to serve; but no one not subject to a road tax could be compelled to render such service.

Another provision of the law of 1858 placed some further limitations upon the time in which the supervisor could complete his road labor. For example, the regular road work must be completed before July 1st and after April 1st of each year. If in his opinion such labor was not necessary at this time, the supervisor was permitted to delay one-third of the amount until after July 1st, but in no instance beyond October 1st. For failure to carry out such a schedule he became liable to a penalty of a hundred dollars; and he was, furthermore, responsible for all damages arising from defective roads or bridges within his district, in case a notice thereof was sent him in writing. As in previous acts he was authorized to call out all the able-bodied men in his district in emergencies, but for no period longer than two days without their consent. A further duty of the supervisor is found in the regulation requiring the posting of district tax lists in three conspicuous points in his district. Such tax lists were to come into his hands from the township clerk, who was required to prepare them.

A feature which indicated the growing necessity of system appears in the requirement that the supervisor of roads should possess a map furnished to him by the township clerk on the authority of the county judge. Upon this map, or plat, all new roads legally established were

to be indicated, the accompanying field notes were to be kept on file, and from time to time any necessary revision of the data must be made by the clerk.

Finally, this law provided for an extended report under no less than eleven topics to be returned to the township trustees at the regular meeting in October. The items in this summary of a year's supervision included the names of all persons who had completed their allotment of road work and also all of those who had failed, the amount of work performed, or money collected in lieu thereof, taxes on property paid in labor or money, lists of non-residents who had not paid in labor or money, as well as other topics of general information, not omitting the supervisor's own personal account of a financial nature and his claim for services rendered at one dollar and a half per day. This act required all supervisors to meet together at the October settlement, and the township trustees were authorized to pay them out of the road fund. Any amount remaining in this fund must then be distributed by the clerk upon the order of the trustees, but for road purposes only.[291]

In 1862 there were two amendments to the laws providing for highways, both aiming at more efficient service in the labor expended and the accumulation of a fund for improvements. The first of these acts placed emphasis upon the erection of guide-boards and instructed the trustees to levy an additional tax to be paid in money for this purpose. Moreover, the act defined the dimensions and character of such aids to the traveler and declared that "it shall be the duty of the Supervisor . . . . to place guide-boards at cross roads and at the forks of the roads in his district; said boards to be made out of good timber, the same to be well painted and lettered, and

placed upon good substantial hardwood posts, to be set four feet in the ground, and [they] shall be at least eight feet above the ground."

In the same year an act prescribed the "duties of Township Trustees and Road Supervisors in certain cases". The former were required to determine the exact amount of the road tax to be paid in money and in labor, and the supervisors were required to collect the same before the first Monday in October of each year or report such taxes as delinquent to the trustees, in the same manner as in the case of non-resident landholders. At the same time the compensation of the supervisors was reduced to one dollar per day.[292] At the next session of the General Assembly, however, the per diem of one dollar and fifty cents was restored as provided in the *Revision of 1860*. Probably in response to a suggestion from Governor Kirkwood, a law in 1864 extended the age for the payment of poll tax to the road fund so that there was demanded of every able-bodied man between the ages of twenty-one and fifty, who resided in the district, two days' labor upon the highway.[293]

The last two acts referred to were repealed in 1868. As a substitute, which included provisions found in former statutes, there was enacted a law which made provision for a township road fund, the amount and management of which should be determined by the trustees. It might be invested in machinery or such equipment as appeared best adapted to the construction and repair of roads, as well as for the payment of any previous debt contracted by the township for road purposes. It was also within the discretion of the township trustees to determine whether the general fund thus provided for

should be expended for equipment or for general road work in the township.

The fund as collected by the supervisor was returnable to the township clerk, who became responsible for the money coming into his hands; and if the general fund was invested as provided, the trustees were directed to appoint either the township clerk or one of their own number to care for the tools and machinery owned by the township. The appointee, moreover, was authorized by this law to fix the time when a supervisor should be permitted to use this public property in labor upon the roads in his district. Whoever was appointed as "care taker" was entitled to a compensation according to the judgment of the trustees.[294] A provision of the *Code of 1873* left no option as to who should take charge of the township road machinery, for the clerk was specified then as the one to be held responsible for its preservation and repair.[295]

The road supervisor became more of a "task-master" than before, when in 1880 a law relating to the support of the needy stipulated that trustees of townships or overseers of the poor might require able-bodied persons asking for aid to labor upon the highway — the labor to "be performed under the direction of the officer having charge of working streets or highways."[296]

In connection with the functions of the township trustees much has been said relative to roads and highways that need not be repeated here; but it is necessary to restate the provisions of certain acts which indicate the general road legislation. It was in 1884 that the township electors were authorized to petition for the adoption of the single "highway district" plan. The law stipulated that the trustees might form such a district when

so requested; but it appears that they were not obliged to do so. Moreover, it was expressly stated that at any annual April meeting of the trustees, after two years of trial, the former plan of subdivisions of the township might be restored. Under the single district plan it was necessary to collect all the road tax in money. The contractor or superintendent of roads in the single township district was required by the law to act under the direction of the trustees, who were authorized to appoint assistants if they appeared to be necessary.

An important provision of the law prohibited the incurring of any indebtedness for road purposes unless the same was provided for at the time by an authorized levy. An equitable and judicious division of the township road fund was anticipated, and three-fourths of the total amount was required to be expended prior to the middle of July in each year. Such a combination involved the consolidation of all funds belonging to the several road districts, and likewise a common liability for all pending claims. Officers of the township whose compensation was fixed received the same amount for their labor in providing for the execution of the road laws as for other duties; while the supervisors of the road districts in townships which retained the former district system were by this act granted a per diem of two dollars.[297]

In 1898, when the statutes required the landowners to "cut near the surface all weeds on said land within the limits of the public roads thereon", the supervisor of the district became responsible for the execution of the law. If such work was not completed as stipulated before a fixed date, or after due notice in writing served by the supervisor, it was the duty of the latter to proceed at

once to cut the weeds. In that event his compensation was to be paid from the district road fund and finally taxed to the landowner.[298]

The optional provision relative to consolidation, as defined in the law of 1884, became a mandatory feature of the road law approved on April 4, 1902. The latter act abolished the office of road supervisor, the road districts, and consequently the "separate ballots" necessary in township elections. In the main the provisions for the formation of a single road district as found in the law of 1884 were reënacted in 1902. The road "superintendent or contractor" under the latter statute became responsible for the report to the township clerk as formerly made by the road supervisors.[299]

The law relating to the appointment of a "road superintendent" was so amended in 1906 that instead of one such officer, "not to exceed four" might be appointed by the trustees. During the same session of the legislature the first act providing for the use of the "road drag" was passed. As mentioned in a previous chapter, the township trustees were to order the drag to be used under the direction of the road superintendent, and they were required, also, to fix the compensation — which, however, could not exceed five dollars per mile for any one year.[300]

In 1909 increased authority was granted to the township officers in enforcing the provisions of the road dragging statute. Moreover, regulations were prescribed requiring that the work be performed under favorable conditions and that the road be left free from obstructions. It was made unlawful, also, for anyone to travel over and damage any part of a road thus put in repair until sufficient time had passed for it "to pack under a horse's

feet'' or to freeze ''hard enough to carry''. And for violation of these provisions penalties were provided.[301]

The laws passed in 1906 and 1909, which authorized dragging under the superintendent of roads in the township, were repealed in 1911 and the township trustees were directed to appoint a ''superintendent of dragging''. Furthermore, the entire township was districted in detail, each section of land determining two or more districts. Such divisions being based upon the government survey all designations of districts must be made accordingly. The civil township boundaries could not in such instances affect the description except in so far as they included more or less than a full congressional township.

The act defined the duties of the superintendent of the road dragging and provided a form of report which should correspond with the districts described. In this manner a complete record of the persons employed, the distances covered, and the compensation allowed must be kept and certified to by the superintendent, who is required to supervise the work in all districts ordered to be dragged by the trustees.[302]

After the law of 1902 requiring the consolidation of road districts had been in effect for six or more years it appears that there was a demand for another statute permitting the township trustees to provide for ''two or more road districts'' and for the election of a road superintendent in each. To accomplish this a petition, including the names of sixty-five per cent of the voters in the township, must be presented to the trustees. After a trial of two years, upon a petition from a majority of the voters the ''one-district plan'' might be restored.

If the election of the ''road superintendent'' in the district was the plan adopted, it became necessary to

restore the separate ballot and the former ballot box containing the "compartments" corresponding to the districts. This act, approved on March 17, 1909, furthermore, permitted the taxpayer to work out one-half of his road tax if the township was divided: the trustees were to determine the amounts to be paid in cash and in labor as in former laws relating to highways. The functions of the township clerk were the same as under the individual road supervisors.[303]

XVI

THE OVERSEERS OF THE POOR

Among the first township officers for which provision was made in the Territory of the Northwest in 1790 were "one or more overseers of the poor" to be nominated and appointed by the justices of the court of general quarter sessions for the county and to serve for the term of one year. Their duties included (1) an inquiry into the affairs of all poor and distressed families as to their means of support, and (2) a report of any in need to a justice of the peace in the same county. They were also enjoined to report in the same manner all persons "likely to become chargeable to the township".[304] A further provision of the law, adopted from the Pennsylvania Code by the Governor and Judges in 1795, required the appointment annually by the court of general quarter sessions of "two substantial inhabitants of every township" to be overseers of the poor. These officers were empowered to levy, under the approval of two justices, a tax for the support of the poor. The fund so collected was to be applied in part in providing "proper houses and places, and a convenient stock of hemp, flax, thread and other ware and stuff", in order that work might be furnished to those who were competent, and in part as a fund for the relief of the helpless.

The overseers so appointed were authorized also to apprentice all poor children. They were declared to be "bodies politic and corporate in law", and were thereby

to have perpetual succession, being authorized to receive gifts of whatever kind for the benefit of the poor. To settle and adjust the accounts of these officials the free male inhabitants at the annual election for assessors were required also to choose "three capable and discreet freeholders".[305]

In the Territory of Michigan the Governor and Judges in their legislative capacity declared (1820) that "the county commissioners in the respective counties" should have the "care and management of all paupers".[306] Again, in 1827, the Legislative Council enacted a law providing "that every township in this Territory shall support and maintain" its own poor. It was the duty of the overseers, according to this act, to see that any strange person, likely to become a charge upon the township, was immediately returned to the place from whence he came, if on inquiry two justices of the peace approved of such action. The overseer of the poor in the township to which such a pauper might be returned was required to receive such pauper under penalty of a fine of twenty-five dollars.[307]

In 1829 the Michigan electors at their annual township meeting were required to choose five directors and a township treasurer. These six men were to form a board "for the care and protection of the poor of such township". These directors, furthermore, were to "divide themselves, by ballot, into three classes", and they became, therefore, a perpetual body, their terms of office expiring at different times. No member was obliged to serve more than one year; and in the event of a vacancy the remaining members were empowered to fill it.

As a board they were authorized to contract for the care of the poor in their township: contracts might be

let "at public auction". They might also contract with a physician for attendance upon persons under their care. All the functions, indeed, of the overseers of the poor and of the justices of the peace as named in the previous act were now transferred to this board. For failure to qualify in this office the offender became liable to a penalty of twenty dollars "for the use of the poor of the township". There was a provision also that this board, established "for the laudable and benevolent object in this act named", should serve "without any fee or reward". Moreover, they were granted full power and authority to make all necessary rules and regulations for the "direction and government of the poor".[308]

In 1831 the electors of the Territory of Michigan were empowered to choose "one citizen, a resident of the township", who should serve as director of the poor for one year. He assumed the same powers and duties heretofore conferred upon the board of directors; and he was subject to the same penalty as the members of the former board in case he should refuse to qualify — that is, a fine of twenty dollars. In conjunction with the treasurer he was required to account to the auditing board for all money for which he was held responsible. This act provided that "the director and treasurer of the poor shall receive such compensation for their services as the township board shall allow them."[309]

The election of two "directors of the poor", who should continue in office for one year, was provided for in an act of 1833. Thus the number of overseers changed from five in 1829 to one in 1831 and to two in 1833.[310] It was in the following year (1834) that the Iowa country was attached to the Territory of Michigan and the laws then in force were, so far as applicable, extended over

this area. Then, after Iowa had become a part of the original Territory of Wisconsin, an act of January, 1838, placed the poor in the care of the county commissioners who were to have "exclusive superintendence" of the unfortunates in their respective counties.[311]

The Wisconsin statute remained in force in the Territory of Iowa until an act providing for the organization of townships was approved on January 10, 1840. Among the township officers provided for in this act were two "overseers of the poor", who were to be chosen regularly by the electors to serve until their successors had qualified.[312] On January 16, 1840, however, there appeared another statute providing for the relief of the poor, wherein it is distinctly stated that "the board of county commissioners of the several counties of this territory" are vested with "entire and exclusive superintendence of the poor" in their counties.[313]

From a comparison of the Wisconsin statute of 1838 with that of Iowa Territory, approved on January 16, 1840, it is clear that the latter was but a reënactment of the former, as is shown by the following provisions:

The Wisconsin Statute

Section 1. That the board of county commissioners, of the several counties of this territory, shall be, and they are hereby vested, with entire and exclusive superintendence of the poor in their respective counties.— From *Laws of the Territory of Wisconsin,* 1836–1838, p. 178.

The Iowa Statute

Section 1. . . . That the board of county commissioners of the several counties of this territory, shall be and they are hereby vested with entire and exclusive superintendence of the poor in their respective counties.— From *Laws of the Territory of Iowa,* 1839–1840, p. 83.

The act of 1840 was not repealed until February 16,

1842, and then only in counties already organized or to be organized into townships. It is probably true that the overseers mentioned in the statute of 1840 did not perform many duties until they were specifically defined in 1842. Their duties as enumerated in the latter statute were to warn from the township, by service of notice through the constable, any person who, not being a legal resident, was likely to become a charge upon the township. Where no poorhouses were established the overseers were authorized to furnish relief to the needy at township expense; and if such assistance became permanent for any individual the overseers might receive proposals for his maintenance, and make contracts for such care on the "most reasonable terms". The contract thus made could not, however, extend beyond one year and could be made only in case of persons having a legal residence.

Upon the recommendation of the overseers the directors of the poorhouse, in counties where such institutions had been established, could receive or reject the pauper as they might decide after due investigation. In case of rejection the overseers were required to return the individual to the township and provide the proper care. Previous to the issuing of an order upon the directors to receive the needy person, the overseers were instructed to make inquiry into the condition and necessities of the person in question. All expenses incurred in the removal of these charges of the township to the poorhouse, or in caring for them before that time, were payable from the county treasury upon an order from the board of directors of the poorhouse, drawn upon the county commissioners.

Those unfortunate persons who had no legal habitation in the township might have temporary assistance;

but it was the duty of the overseers to return these individuals to their places of legal residence as soon as possible. In all their proceedings they were required to keep "fair and accurate accounts", including a record of all the poor in their township, with the services rendered to each, in addition to a record of their own individual services as overseers. All of these items were to come before the township trustees at the time of settlement, when the latter officers might allow a compensation that was just and reasonable.[314]

That the second act for the relief of the poor was taken directly from the Ohio statute of 1831 is clearly seen in the following comparison of sections:

The Ohio Statute

Sec. 4. The overseers of the poor, upon receiving information that any person has come within the limits of their township to reside, who will be likely to become a township charge, they shall issue their warrant or order to any constable of the township, commanding said constable forthwith to warn such person to depart the township, by reading said warrant or order of the overseers of the poor, in his or her presence and hearing, or by leaving an attested copy thereof at his or her last place of residence: and it shall be the duty of such constable, receiving such warrant or order, to make immedi-

The Iowa Statute

Sec. 4. That the overseers of the poor, upon receiving information that any person has come within the limits of their township to reside, who will be likely to become a township charge, shall issue their warrant or order to any constable of the township, commanding him forthwith to warn such poor person to depart the township, by reading such warrant or order of overseers of the poor, in his or her presence, and hearing or by leaving an attested copy thereof, at his or her last place of residence; and it shall be the duty of such constable receiving such warrant or order, to make immediate

ate service thereof, in manner above directed, and to certify on the back of such warrant, that he read the same in the presence or hearing of the person or persons therein named, to depart the township, or left an attested copy thereof at his or her last place of residence, as the case may be; which warrant the said constable shall immediately lodge with the clerk of said township, who shall record the same, and the certificate of the constable indorsed thereon, within three days thereafter, in the book containing the records of the township.—From Chase's *Statutes of Ohio,* Vol. III, p. 1832.

Sec. 11. That the said overseers shall keep fair and accurate accounts of all expenses incurred for the support of the poor within their respective townships, and make entries in a book of the names of the poor, with the time when each of them became chargeable, together with an account of their own services rendered: and on the first Monday of March, annually, the said overseers shall meet the trustees of their respective townships, and exhibit their said books and accounts;

service thereof in manner above directed, and to certify on the back of such warrant, that he read the same in the presence or hearing of the person therein named to depart the township, or left an attested copy thereof at his or her last place of residence, as the case may be; which warrant the said constable shall immediately lodge with the clerk of said township, who shall record the same, and the certificate of the constable endorsed thereon within three days thereafter, in the book containing the records of the township.— From *Laws of the Territory of Iowa,* 1841–1842, p. 58.

Sec. 11. That the said overseers shall keep fair and accurate accounts of all expenses incurred, for the support of the poor within their respective townships, and make entries in a book of the names of the poor, and the time when each of them became chargeable, together with an account of their own services rendered; and on the first Monday of March annually, the said overseers shall meet the trustees of their respective townships, and exhibit said books and accounts, which the

which the said trustees are hereby authorized to audit and allow, together with such compensation to the said overseers for their services, as shall, in the opinion of the said trustees, be deemed just and reasonable. — From Chase's *Statutes of Ohio,* Vol. III, p. 1833.

Sec. 13. That all gifts, grants, devises and bequests, hereafter to be made, of any houses, lands, tenements, rents, goods, chattels, sum or sums of money, to the poor of any township, by deed, gift, or by the last will and testament of any person or persons, or otherwise, shall be good and valid in law; and shall pass such houses, lands, tenements, rents, goods and chattels, to the trustees of such township, and their successors in office, for the use of their poor respectively, under such regulations as shall, from time to time, be made by law.— From Chase's *Statutes of Ohio,* Vol. III, p. 1834.

said trustees are hereby authorized to audit and allow, together with such compensation to the said overseers for their services, as shall, in the opinion of said trustees, be just and reasonable.— From *Laws of the Territory of Iowa,* 1841–1842, pp. 59, 60.

Sec. 13. That all gifts, grants, devises, and bequests, hereafter to be made of any houses, lands, tenements, rents, goods, chattels, sum or sums of money, to the poor of any township, by deed, gift, or by the last will and testament of any person or persons or otherwise, shall be good and valid in law; and shall convey such houses, lands, tenements, rents, goods, and chattels, to the trustees of such township, and their successors in office, for the use of their poor respectively, under such regulations as shall from time to time be made by law.— From *Laws of the Territory of Iowa,* 1841–1842, p. 60.

The Iowa statute approved on February 16, 1842, which is quoted above, follows the Ohio statute of 1831 very closely in other sections. Moreover, another law providing for poorhouses, approved on February 17th of the same year, also follows an Ohio law, as is shown in the following comparison:

The Ohio Statute

Section 1. That the commissioners of each and every county within this state, shall be, and they are hereby, authorized to erect and establish poor-houses within their respective counties, whenever, in their opinion, such a measure will be proper and advantageous; and for that purpose it shall be lawful for the said commissioners, to purchase such lot or tract of land as they may judge necessary for the accommodation of the institution: *Provided,* that if the commissioners of any county shall think proper to purchase land, and erect a county poor-house, under the provisions of this act, the expense of such purchase and erection, shall be defrayed by a tax levied on the objects of county taxation for that express purpose; which tax shall be collected and paid over in the same manner that other taxes are collected. — From Chase's *Statutes of Ohio,* Vol. III, pp. 1829, 1830.

Sec. 9. That no person shall be admitted to any such poor-house as a pauper, unless upon the order or warrant of the trustees of the proper town-

The Iowa Statute

Section 1. That the county commissioners of each and every county within this Territory, shall be, and they are hereby authorized, to erect and establish poor houses within their respective counties, whenever in their opinion, such a measure will be proper and advantageous, and for that purpose it shall be lawful for said commissioners, to purchase such lot or tract of land, as they may deem necessary for the accommodation of the institution: Provided, that if the commissioners of any county shall think proper to purchase land, and erect a poor house under the provisions of this act, the expense of such purchase and erection, shall be defrayed by a tax levied on the general assessment roll for that express purpose, and collected and paid over in the same manner that other taxes are.— From *Laws of the Territory of Iowa,* 1841–1842, p. 83.

Sec. 9. That no person shall be admitted to such poor house, as a pauper, unless upon the order of the trustees of the proper township, or of the county

ship, directed to the board of directors of the poor-house of the proper county; which order or warrant shall be accompanied by a statement of facts signed by said trustees, setting forth the name, age, birthplace, length of residence, previous habits, and present condition of the person claiming to be a pauper, together with the time or times at which such person or persons, if not a native of the township, has been warned to depart therefrom; and if neglected to be warned or removed, the reason or cause of such neglect; and if, on a full examination of the facts or circumstances touching the right of such pauper to admission into the poor-house, which may come to the knowledge of the directors, they shall be of opinion, from the failure or neglect of duty on the part of the overseers of the poor, or from want of the proper legal residence, or from any other cause, such person is not legally chargeable to the county as a pauper, he or she shall not be admitted to the poor-house: and the superintendent shall not admit any person into the poor-house as a pauper, unless upon the or-

commissioners, directed to the board of directors of the poor house of the proper county, which order shall be accompanied by a statement of the facts, signed by said trustees or county commissioners, setting forth the name, age, birth-place, length of residence, previous habits, and present condition of the person, claiming to be a pauper; together with the time or times at which such person or persons, if not a native of the county or township, has been warned to depart therefrom, and if neglected to be warned or removed, the reason or cause of such neglect; and if, on a full examination of the facts or circumstances, touching the right of such pauper to admission into the poor house, which may come to the knowledge of the directors they shall be of opinion, from the failure or neglect of duty on the part of the overseers of the poor, or from want of proper legal residence, or from any other cause, such person is not legally chargeable to the county as a pauper, he or she, shall not be admitted to the poor house, the superintendent shall not admit any person into the poor house

der of a member of the board of directors.— From Chase's *Statutes of Ohio,* Vol. III, p. 1831.

as a pauper, unless upon the order of a member of the board of directors.— From *Laws of the Territory of Iowa,* 1841–1842, pp. 84, 85.

While the entire Ohio statute was not adopted in every detail, all of the provisions of the Iowa law are included in the Ohio act.

By the act of 1842 the expenses of poor relief were to be paid from the township treasury; but in 1844 the county commissioners were authorized to pay all such costs and expenses from the county treasury in the same manner as other claims were audited and allowed. This law was in force after February 12th of that year.[315] Finally, the office of "overseer of the poor" became merged with that of the township trustee by the act governing township organization in 1845, as mentioned above in connection with the office of trustee.[316]

The poor of certain counties were provided for in the acts of the first session of the General Assembly of the State, and thereby the townships were to some extent relieved from the exclusive care of unfortunates. But poor farms, authorized by special laws, were, it appears, not extensively purchased. This is illustrated in the act relative to Des Moines County which was passed in 1847 and repealed at the next regular session.[317] Again, in 1851 a similar special act allowed the commissioners of Lee County to purchase "any quantity of land as to them may seem fit", but not to exceed a tract of two hundred and forty acres.[318] To be sure these are special acts, but they are illustrative of the tendency toward centralization in the care of the poor.

In the *Code of 1851* the general law concerning the

relief of the poor authorized the trustees of the township to seize the property belonging to the parents of abandoned children, resident within the township. This property, whether chattels or real estate, came under their immediate jurisdiction by warrant from the courts issued where the property was located. When in possession of such property the law required the trustees to make a proper inventory of the same and to make due return of their proceedings in the matter to the county judge. They could proceed no further, however, than the taking possession of such property and such rents as might arise, except on orders from the county judge; but with his approval, disposition could be made so that the use of such property might be appropriated for the benefit of the abandoned family.

The law declared further that where no poorhouse was established in the county the trustees were required to oversee and care for the poor in their respective townships so long as they might remain a county charge. In such instances, the trustees were subject to direction from the county authority, which was then centered in a single officer, the county judge. Previous to obtaining relief the individual must make application to the trustees who then became responsible for the care of such unfortunates, after having satisfied themselves by due inquiry that the applicant was worthy of the temporary care, which, alone, under the law the township officers were permitted to furnish. Such relief could become permanent, however, upon the approval of the county judge. Furthermore, an appeal lay from the trustees to the county judge who was empowered to command the trustees to furnish such assistance as he deemed requisite in any specific case.

Again, if the poor of the county were cared for under a contract, which could be let by the judge to the lowest bidder, and if all the able-bodied poor were employed by the contractor at some labor, it became the duty of the trustees to supervise such labor. It was the evident intention of the law to protect the laborer, since the work was subject to the orders of the trustees and, in the last resort, of the county judge. When the county possessed a poorhouse, the erection of which the county judge might order with the approval of the electors, the township trustees in their capacity as overseers were authorized to recommend in writing the individuals entitled or required to enter such an institution. Upon the issuing of such an order the trustees were required, also, to send notice to the director or directors of the poorhouse, when such officers were appointed, and otherwise to the county judge.[319]

The law creating a board of supervisors, which became effective in July, 1860, declared that they were to "exercise all the powers in relation to the poor now possessed by the county judge or county court". That is, they were to make rules and regulations governing all such matters and they were authorized also to purchase and improve a farm according to the statute of 1851.[320]

In 1868 the township trustees as overseers were directed to make suitable provision for the relief of the poor in their respective townships, if in their judgment any such individuals should not be sent to the poorhouse. The aid furnished might include "food, rent, clothing, fuel and lights, medical attendance", or money, but it could not in any instance exceed two dollars per week. Up to this amount persons preferring such outside aid need not be sent to the poorhouse, but might remain in the

township under the care of the overseers (trustees). It must be understood that the county authorities regulated the expenditures in such cases, the township trustees making the necessary claims for their local poor support.[321]

An amendment to the law of 1868 provided, in 1876, that only the families of soldiers could make a choice in the form of aid received, whether it should be outside or at the county poor farm. In all other cases such assistance remained within the discretion of the county board or the overseers of the poor acting under their supervision.[322] Again, in 1880 the trustees were charged with an additional responsibility inasmuch as they were empowered to put to labor any indigent person or member of his family when in their opinion such a requirement would work no oppression. In the employment upon the public highway "at a rate of not to exceed sixty-five cents per day" it was expected that the individual might earn the necessary support to be provided by the overseers. A transient needy person who was able-bodied might be assisted to the extent of forty cents per day, which he must earn at labor upon the highway at the rate of five cents per hour.[323] In all accounts for supplies furnished or services rendered by the trustees to the poor an act of 1888 required the county supervisors to reject the claim when it appeared to be extreme.[324] Moreover, the trustees were thereafter bound to act in such affairs in accordance with the general rules and regulations adopted by the county board.[325]

From the establishment of local government down to the present time, therefore, some provision has been made for the care of the poor. The authority in immedi-

ate control, which seems to have been the nearest official, individual, or body, has depended, it appears, upon the status of the local unit of government. Under a combined system the relation of the township to the county authority has been determined by the method of administering poor relief. Existing laws appear to secure a clear relation while assuring as near as may be an economic administration.

PART III

SOME SPECIAL ASPECTS OF TOWNSHIP GOVERNMENT IN IOWA

XVII

THE ORIGIN OF TOWNSHIP LAWS AND TOWNSHIP SYSTEMS

The township as an institution in American local government had its origin in New England, where, as is well known, its characteristic features were developed previous to the organization of the higher forms of local administration. Moreover, through legislation the relation of the township to the higher areas of administration has been so adjusted that the original principles of self-government as expressed through the town meeting or its selected representatives have been retained. Thus in New England the institution of the American township in substantially its original form has survived down to the present day.

Early in the eighteenth century the towns of New York were authorized to select from among their citizens an officer who, while performing many local functions in the towns, should at the same time act as a member of a county board: this was the origin of the township-county system in which the county was the subordinate member. Later another form of the same system appeared in the commonwealth of Pennsylvania in which the reverse condition was the characteristic feature, namely, the township was subordinated to the county, having few powers and no representation upon a county board. From these two sources (New York and Pennsylvania) it may be said that all the modified forms of local government in which the township is in any sense a part may be traced.

As regards the history and development of township government one does not have to look far to see that closely associated with New York and Pennsylvania were the States formed from the Territory of the Northwest. Although there are some evidences of a town meeting, similar to the New England type, having been held among the first settlers upon the Ohio River, the predominating political influences in that region were such that in the earlier legislation the lesser influences of the New England settlements were overpowered, and the first statutes of the Territory were derived largely from Pennsylvania and Virginia, instead of from New England. Moreover, the Pennsylvania plan of county-township government appears to have prevailed throughout the early period until the Territory was subdivided — and indeed thereafter until Michigan became an independent Territory.

Later in the development of local government in the Territory of Michigan the township became an important factor in local affairs. And finally, about 1827, the features of the New York plan became conspicuous in the local organization.

It was during the period of the development of the New York plan of township-county government in Michigan that the Iowa country was attached to the Territory of Michigan for purposes of temporary government. And it was in 1834 that, under a Michigan statute, townships were first established in the Iowa country and their organization provided for in an election which occurred on the first Monday in November.

Now these first townships in Iowa were based upon laws which had previously been adopted by the Territory of Michigan from different sources. They included features of both the New York and the Pennsylvania plans.

Furthermore, there appears to have been no modification of this mixed plan of organization during the brief period (1834–1838) when Iowa was under the jurisdiction of the Territories of Michigan and Wisconsin. Unfortunately the union of county and township authorities in the Iowa country during those years makes it quite impossible to state just what powers were actually exercised by each of them.

Upon the organization of the Territory of Iowa, however, there appears to have been some hesitation in the adoption of statutes previously in force in the original Territory of Wisconsin. Indeed, the first annual message of the first Governor, Robert Lucas, pointing out as it did the incompatibility of the Wisconsin and Michigan statutes as a basis for the organization of local government, must have been disconcerting to the members of the first Legislative Assembly. Nevertheless, it does not appear that at its first session the Legislative Assembly adopted any legislation which departed very far from the statutes already in force under the provisions of the Organic Act.

At the second session of the Legislative Assembly there was a definite movement in favor of the adoption of Ohio statutes. (See above, pp. 27–32.) An act was passed repealing "all the laws of Wisconsin and Michigan", as well as of Great Britain, which were previously in force in the Territory of Iowa; and the legislature of the Territory was then free to adopt or enact such laws as it preferred. How much of this tendency to adopt Ohio statutes should be credited to the first Governor and what portion to the individuals who composed the Territorial legislature is not determinable; but in the light of the influence of other recommendations of the first executive and the apparent response to his

suggestions relative to local government, one is led to conclude that the influence of Robert Lucas in determining the character of local legislation was considerable.

In view of the fact that Governor Lucas had been a former executive of Ohio, that he had been for nineteen years a member of the legislative body of that State, and that he had served as the presiding officer both of the Senate and of the House of Representatives, it is plain that he must have been most intimately acquainted with the Ohio statutes. He could speak and act from experience and with the authority of one who saw conditions and needs more clearly and more broadly than did the members of the Assembly. While there appears to be no specific reference to the Ohio statutes in the Governor's messages to the Legislative Assembly, he did, however, recommend the Michigan school law as a good statute for the Territory of Iowa to follow; and the journals show that this statute was adopted almost immediately in its entirety. It may be fairly assumed that the adoption in so many instances of provisions from the statutes of Ohio was not without the Governor's suggestion. Moreover, it has been discovered that the laws of Ohio were not only a part of the library of the Territory, but they were also in the private library of the Governor. Indeed, the very copy of the statutes of Ohio for 1804–1805, with the leaves dog-eared at the township law, from which extracts have been taken in these pages, was the individual property of the Governor — a volume which has recently come into the possession of The State Historical Society of Iowa.

It appears, then, that the Legislative Assembly of the Territory of Iowa broke away from the ties that naturally bound it to the legislation of the Territories of Mich-

igan and Wisconsin and returned for statutory guidance to the original laws of the Territory of the Northwest, supplemented later by the statutes of Ohio. While numerous amendments may have been made to the original act as formulated or adopted in Ohio, it has been possible through careful search and comparison to discover the statutes from which the provisions of the Iowa laws were taken.

That there was some delay in the attempt to formulate the first law relative to township organization and that it failed to pass at the first session of the Territorial legislature is not strange when viewed in the light of the Governor's message. The result of urging that new statutes be drawn in harmony with the Organic Act was to halt the reënactment of Wisconsin or Michigan statutes for purposes of local government. Furthermore, the first act providing for the organization of the common school system was brief and, to the Governor — who had been emphatic in his recommendations — wholly unsatisfactory. This led to the suggestion in his next message that the Michigan law be adopted.

That certain general laws of Wisconsin Territory were continued by reënactment in the Territory of Iowa was probably due to conditions which made a change impracticable. For instance, the continued operation of the revenue laws then in force in the Territory of Wisconsin, the act relating to justices of the peace, and the election laws, modified only to meet the conditions required by the Organic Act, were immediate necessities when the division of the original Territory of Wisconsin occurred in 1838. This, however, could not be said of the laws affecting townships, roads, the poor, and highways, or other local affairs, upon which action might be delayed;

and so these are among the acts which were later drawn from the Ohio statutes as hereinbefore indicated. (See above, pp. 131, 153.)

The townships provided for under the Michigan statutes were coextensive with the counties; and they continued in this status after the subdivision of the two original counties of Dubuque and Demoine had been effected. No townships based upon the government survey were established in the Territory of Iowa until after the adoption of the Ohio statute in 1840. This, moreover, was seven years before any provision was made for the organization of townships in Illinois under the county-option plan.

Pennsylvania and Virginia laws were largely the source of the first statutes in Ohio and Michigan. On the principle that statutes are borrowed from neighboring jurisdictions Iowa would have borrowed from Wisconsin and Illinois. But all the evidences appear to point to the conclusion that these neighboring jurisdictions were not following the township plan with which the Governor and a number of other citizens of Iowa were familiar. The Organic Act, the books in both the Territorial library and the Governor's private collection, the previous experiences of the first executive, and his recommendations with reference to the laws in force in the Territory, all seem to have combined to bring about legislation relative to local government in Iowa which was based upon the statutes of Ohio.

XVIII

THE TRANSPLANTING OF STATUTES

The laws best adapted to the conditions in one Commonwealth are rarely found to be suitable in all respects to the conditions obtaining in another jurisdiction — especially if the adopting State is in a pioneer stage of development. In Iowa in the literal acceptance of the statutes of older jurisdictions there were introduced into the early laws certain provisions which do not seem to have had any immediate application to the local conditions then prevailing in the Territory. On the other hand, it is noticeable that some of the provisions which were at first omitted as inapplicable were at a later period made a part of the statutes. That the Iowa laws as taken from the Ohio statutes did include sections which were locally inapplicable is indicative of the general approval of the proposed laws as well as the general acceptance of what appeared to be necessary in the development of the Territory.

It was important, in the opinion of Governor Lucas, that the laws should read well and provide as nearly as possible the same legal environment as was found in the States from which the settlers came. And so he urged the adoption of statutes for the organization of the local government in both his first and his second annual messages. Moreover, it is well known that Governor Lucas considered the school law which he recommended from the Michigan statutes, and which was adopted in

detail, as a little beyond the needs of the time; but his attention was fixed upon the prospective State as well as upon the immigrant who might investigate the statutory provisions governing local interests.

It is quite certain that a local government established under the precinct system in which general oversight was retained by the county, and in which justice was administered through officers appointed by a centralized authority, was more economical for a sparsely settled community having few needs than a fully organized township system would have been. But this form of local administration did not long satisfy a community whose citizens had been accustomed to a government administered by local officers of their own selection, and who had, therefore, some voice in local affairs. If an example of this demand is desired it is seen in the fact that townships were organized in the Territory almost immediately following the approval of the first act making provision for their establishment. It is also suggestive of the truth of the above statement that the very first movement to establish townships in Iowa was in a county where Ohio settlers predominated.

It is clear that the legislators who composed the first law-making bodies in the Territory of Iowa did not cling tenaciously to the laws of the States of their birth. If this had been the case, provision for township organization would not have been made so early, since a majority (altogether twenty-two) of the members of the first legislature were born in States not having a township system. Their action may have been influenced by a later environment in States where they acquired a residence.

The necessity for township organization and the claims for its superiority over other forms of local organ-

ization as indicated in the messages of the Governor were doubtless contrary to the actual conditions in Iowa at that time. The too numerous body of office-holders is evidence of this fact; and so, near the close of the Territorial period, the functions which in the first laws were assigned to separate officers were united and the least important office was abolished. Moreover, this consolidation of functions has persisted to the present day, without any modification even in view of the additional duties falling to an individual officer.

It has been said that the school furnished the nucleus about which the township organization was developed in the western States. There appears, however, to be little warrant for such a conclusion. Indeed, the only possible basis for such an opinion is found in the provision for trustees and a treasurer for the school lands in each congressional township in Ohio, and later also in Michigan. But in those jurisdictions the civil township was, as a matter of fact, separately established. Indeed, there appears to be no evidence whatever that in Michigan, Wisconsin, or Iowa the school was generally considered before the civil townships were a part of the organized machinery of local government.

So far as known there is but one instance in the Territory of Iowa where the congressional township became an organized school district previous to the organization of the civil township. In 1840 the electors of two townships in ranges six and seven west, township sixty-seven north, petitioned for a school district organization; and their request was granted by the proper authorities — the commissioners of the county (Lee) in which they were situated. This action, furthermore, took place approximately one year before the adoption of the township

system by the entire county. While there could have been very little, if any, direct effect upon the later action, one may grant that in this instance the statement referred to in the previous paragraph has support. But it is quite certain that such was not the general course of evolution in local government. Indeed, an investigation of the statutes of the Territory of the Northwest, of Ohio, of Michigan, of Wisconsin, and of Iowa, does not reveal any evidence in support of the statement that the organization of the school district preceded the establishment of the civil township.

If a later stage in the evolution of the local government areas be considered, in which the congressional and the civil township most nearly coincide in their territorial limits, one might discover certain influences that should be credited to the demand for small district-townships. This, however, is not easy to demonstrate. Nor would such discoveries support the conclusion that "As New-England township life grew up around the church, so western localism finds its nucleus in the school system."[326] It is true that in the later acts providing for the establishment of civil townships an almost reverential attention has been given to the following of congressional township lines in determining the boundaries. But this was not a feature of the first laws, in which the provision defining the electors of townships as residents of those local areas as they are "laid out or may hereafter be designated" appeared to make no specific reference to the thirty-six square miles of territory.

In the early formation of townships the county commissioners, the county judge, or the board of supervisors, as the case might be, paid little attention to the limits of the congressional township. And while they generally

followed section lines in fixing the boundaries, one may say that in the first "setting off", if a county contained no natural barriers, the divisions were always rectangular and congressional townships were frequently included in two or more civil townships. A county of sixteen congressional townships was frequently divided into four equal portions, and as it became more thickly populated these were reduced in area and additional townships were created until finally the civil and congressional areas became for the most part identical. It is not uncommon, however, to find fractions of two or more townships of the government survey included in the present civil divisions. The organization of the civil township upon the basis of thirty-six square miles is, to be sure, due to the government survey, and this is the "germ" of the present general limits of the township as permanently established.

That there was no recognized local center where citizens could assemble is evidenced by the calling of the first elections for local officers at the homes of settlers. Furthermore, the local records establish the fact that early political caucuses and conventions were summoned to meet in the same way.

Early influences in the Territory of the Northwest promised to make the town meeting a feature of local government; but under the sweeping centralized authority granted by the Organic Act to the Governor and his associates the tendency to develop New England customs could not prevail. The later laws of Michigan provided for local control after the New York plan; and as the New England settlers became more numerous the town meeting came to occupy a more conspicuous place. If Iowa had followed the Michigan statutes the town meeting

would probably have become a feature of the local government of this Commonwealth.[327] But in turning to Ohio and adopting laws of an earlier date it transpired that Iowa incorporated into the statutes dealing with local government provisions which had been evolved during the formative period of the Territory of the Northwest.

That the adoption of laws containing provisions for which there is no apparent demand leads to early revision, that amendments are necessary to statutes which do not fully meet local conditions, and that premature action under optional clauses leads to reaction on the part of those who live under them are truths which become evident from a study of consecutive legislation. The combining of functions in local offices, the constantly increasing need for road legislation, and the attempt to return to the precinct system after having adopted the township plan, illustrate the truths just stated. The tendency to reconstruct legislation which involved county or township jurisdiction is very pronounced in Iowa history; and all efforts to establish and organize townships appear to have been directed toward giving the township an area that was reasonable in extent and at the same time restricting its powers as to local regulations. For this reason the multiplication of townships through division upon petitions presented by the electors of those already organized has continued to the present day.

While there was an evident sincerity of purpose in the efforts of the early legislatures to enact laws suitable to local demands and to provide also for the future development of local interests, it is clear that under present conditions, with the same problems to be solved, a legislative body would proceed in a different manner. From

statutes that might serve as a basis for local legislation the unnecessary features would be sifted; and the practicability of the immediate application of provisions would be the measure of their availability. It is probable also that the duties of officers would be minutely defined, and at the same time more offices would be provided for the county and fewer for the township than in 1840.

Since there was no provision for town meetings in the Iowa townships, it was necessary to provide for the exercise of functions formerly left to the voters in those assemblies. That is to say, it was necessary to describe the functions of local officers more in detail, since the discretion of the voters directly or through instructions to the selectmen was not to determine matters of a local nature. The local officer is now governed by the literal interpretation of the law, and penalties are attached to a failure to carry out its provisions. The man must act, not according to his judgment but according to law. Uniformity of procedure may be necessary in many undertakings, but if every action of the subordinate officer is named in the law under which he acts there is evidently less freedom than under the old provisions regulating the town meeting. Moreover, in view of the fact that a local assembly called the town meeting can not, as in some States, provide directly for the affairs of the township, there is naturally but one remedy, namely, that of frequent demands for new legislation.

The clear statutory definition of functions in the several departments of administration by which all the duties of a designated official may be determined without confusion does not appear to have been the aim in local legislation, since here and there in a single line of a

statute a minor duty of some officer is often hidden. No one would suspect from a reading of the definition of "general duties" that under many other general statutes other duties are required. For example, the township trustees, or the township clerk, or the assessor are frequently mentioned in laws that would scarcely suggest, in their titles, their relation to the act or their responsibility in the performance of even a minor function. Thus errors have occurred in the administration of local government through a failure to comprehend the obligations of office, and so a "remedial act" has often become necessary.

While it may be granted that all statutory acts are more or less temporary and that it is necessary to include some functions of all the officers in the local jurisdiction in a single act, it would seem feasible to summarize the specific duties of any one official. Furthermore, it would be an apparent advantage to any official to have in his possession a brief account of the history of his office up to the time he assumed it — not omitting any obsolete provision or established precedent. In the drafting of statutes it appears that the law immediately preceding the one proposed has usually been the basis of action. The historical development of the subject being left out of consideration, a reënactment of provisions tested long before is likely to occur.

Local government legislation possesses a large measure of stability. At the same time there have been periods in which local interests seem to have centered about a single demand. To meet this demand laws were enacted; and if in their execution the results were not as anticipated, amendments were immediately provided to remedy the defects. Occasionally this method of cor-

rection has been carried to such extremes that a new statute would be preferable and far less confusing. Finally, the actual record under the various jurisdictions of which Iowa has at some time been a part signifies the acceptance by a chosen local officer of the responsibility in the administration of whatever law governed him. No further evidence than that of the local records appears to be necessary to demonstrate the exercise of powers conferred upon a local unit of government. Failure in efficiency, if experienced, has not always been due to failure in the administration of the laws.

XIX

THE PEACE OFFICERS

Permanency being the chief characteristic of the office of the justice of the peace and of his ministerial officer, the constable, fewer changes have occurred in the functions, in the jurisdiction, and in the qualifications for this office than in connection with any other office for which the township electors are responsible. It appears that in the Territories of which the Iowa country was at some time a part for administrative purposes, the justice of the peace and the constable were provided in advance of other agents of the local government. For obvious reasons they were at first appointed and commissioned by the executive. Located in remote regions where communication was infrequent and laws appeared to be disregarded, the justice was authorized by the chief authority of the Territory to preserve the peace and administer justice in such civil cases as were most likely to arise in a sparsely settled community.

On September 6, 1834, when the Legislative Council of the Territory of Michigan provided for the organization of the counties of Dubuque and Demoine, the Governor nominated six justices of the peace for the county of Dubuque. On December 26, 1834, he nominated five for the county of Demoine, and at the same time two additional justices for the county of Dubuque. Indeed, before the division of Michigan Territory and the organization of the original Territory of Wisconsin seven more

justices had been appointed for each of the original counties in the Iowa country.[328]

Upon the organization of the Territory of Wisconsin, it appears that Governor Henry Dodge, on November 30, 1836, nominated twenty-five justices for the original county of Dubuque; and for all of the subdivisions of the original county of Demoine he had made, before the end of the year 1837, more than sixty individual selections for this office. Neither did this formidable list conclude his appointments during the period in which the Iowa country was a part of Wisconsin Territory, for it appears that petitions came from many of the counties praying for additional "magistrates" in order that the inconveniences due to an insufficient number might be removed.[329]

While it is true that these were county appointments, it is also a fact that, inasmuch as each county comprised a single township, their jurisdiction which was coextensive with the county was not materially different from what it was at a later date (1840), following the act providing for the election of justices in townships.[330] A significant feature of the petitions that were sent up to the Governor is worthy of notice: they usually set forth the needs of the community and at the same time recommended men in whom the residents had confidence and who in the opinion of the petitioners were best qualified for such an office. While the number of justices in each county depended entirely upon the Governor, who possessed the power of appointment, if the "good of the people" as suggested in their petitions seemed to demand additional facilities for the dispatch of judicial business the Governor appears to have been usually convinced by the suggestion and made appointments accordingly.

If any continuity in custom has been preserved in the forms of local government, the fact will doubtless be demonstrated in the court of the justice of the peace. Moreover, the old county court of "quarter sessions", so often referred to in the local government acts of the Territory of the Northwest, might readily be reconstructed by summoning to a common assembly the several justices of the peace in any county and from the whole number selecting a "quorum". The term "county court" was carried over without reason into the records of some Iowa counties because of the association between the old court of quarter sessions of the justices of the peace and the board of county commissioners. In Iowa the justice has always been limited in jurisdiction to the functions performed by that officer when acting singly, and here he has never acted upon county matters as a member of a "board" composed of justices.

It may be noted further that Governor Lucas, in his first annual message, called the attention of the legislators to the difficulties that confronted them in providing a law defining the powers and duties of the justices of the peace and constables. In his opinion justices' courts were "first in order" and the people were more generally interested in them than in the higher courts. As "guardians of the public peace and the rights of individuals" the importance of providing for these courts early in the organization of the Territory was evident; and since the constable was an officer of this lower court he was included in the recommendations.

Formerly the commissions issued by the Governors of the Territories to the justices of the peace were highly prized by their holders: they were indeed suggestive of a time when the office still retained something of its

"royal" prerogative. But with the multiplication of townships, by the electors of which the justices of the peace and the constable were soon to be chosen, the office lost much of its early importance, since there was no lack of justices to whom any man could readily appeal. It is true, however, that this officer is guided in the performance of his duties by statutory provisions more numerous than those provided for any other officer chosen by the township electors.

As suggested above, the court of the justice of the peace was one of the organs of local administration for which a continuous existence must necessarily be provided under changing jurisdictions. And so at the first session of the Legislative Assembly the law of Wisconsin Territory regulating the acts of the justice of the peace was reënacted in the Territory of Iowa.

XX

THE TOWN MEETING AND ELECTIONS

The democratic type of local government and administration afforded by the town meeting of New England, which is retained in a modified form in some of the western States, depends for its efficiency upon the individual elector. When, however, some of the powers of the town meeting are transferred by delegation to elected officers, by that much the individual elector appears to be relieved of responsibility. Furthermore, in not being required to offer an opinion or to vote upon the details of public management he comes to consider his duty fully performed when he has cast his ballot for the proper number of officers which the law provides to act for him.

There is in reality a wide difference between the town meeting with its democratic assembly of all the electors within its jurisdiction and that form of local organization in which there is exercised simply the power of electing local officers. While in the former the local interests are set forth in all their details, are passed upon by all present, and are then and there determined; in the latter the necessary ballot having been deposited neither thought nor action is further required, since the statute provides for all of the functions of the elected officers who within the limits therein laid down are responsible to no one in the community.

The various modifications to which township government has been subjected since its organization may not be

traceable in every particular. But this much is clear: the town meeting is unknown as an Iowa institution. Instead of the electors determining the functions of the executive offices of the township, the law in Iowa always states that "it shall be the duty of" the local officers to perform certain acts. It is the elective power only which is granted to the citizens of the Iowa townships. It is probable that from the voluntary assemblies of men the annual elections arose, being held at times of the year which at first may have been arbitrarily chosen, but which were later adapted to conditions which confronted the constituted authorities.

For a long period the election of township officers in Iowa occurred annually upon the first Monday in April. This custom was established in the Iowa country while the laws of Michigan Territory were in force, and it appears to have been retained for a quarter of a century without any reason being stated. Neither was this the only election held during the year; for there were August elections, October general elections, and November presidential elections — in all of which the township was the unit. Indeed, it appears that considerable experience was necessary to bring about the consolidation of the numerous separate elections so that it was possible finally to arrive at the biennial election plan.

XXI

THE TOWNSHIP AND TAXES

In all forms of administration revenue is indispensable. Taxes must be levied and collected through the subordinate divisions of the local government. Consequently the problem of adjusting the machinery of assessment and collection so that friction may so far as possible be reduced has occupied the attention of lawmakers through all generations. In Iowa the county and township have met in what appears to have been a contest as to which should control in the assessment and collection of taxes. Problems of taxation are so closely connected with personal interests that an altogether satisfactory plan of raising public revenue has not been discovered, and so the method of experiment has largely prevailed. This is clearly shown by the fact that in Iowa no fewer than six attempts have been made to establish a satisfactory area for the assessment of taxes; and now it appears that after more than fifty years of the township assessor and forty years of the township board of equalization some other plan is about to be evolved in an endeavor to arrive at a better solution of the problem.

Furthermore, the old statutes, by which certain authority was granted to the one or the other unit of local government in the making of assessments, appear to have contained most of the features of any possible plan which may be proposed in the future. For instance, there has been in Iowa the county assessor who individ-

ually listed the property in his entire county, making his returns to the county commissioners who approved and accepted the same. Of the actual working of this law the records from 1838 to 1843 will testify. In the fourth year after the approval of the law, Jesse B. McGrew submitted his assessment roll to the commissioners of Johnson County, Iowa Territory.

Under the act of 1843 the precinct assessor appears — there being five such assessors in Johnson County. Again, the original assessment rolls, filed in uniform manner upon schedules prepared by the clerk of the county commissioners as the law required, are available. While the area included in the precinct for which the assessor was responsible was large, the population was small and the assessment rolls indicate that personal property of any description was limited. In 1844, in each of the three largest precincts of the county mentioned there were but from seventy-five to ninety heads of families. In one of these precincts no individual possessed taxable property the value of which reached one thousand dollars, while in the other two precincts only eleven persons had property to that extent. One may therefore judge of the differences that exist between the duties of the assessor under those conditions and his various functions under present laws if only his duties relative to property are considered. But the assessor under the law of 1843 was permitted to appoint a deputy if he deemed it necessary, while no such provision appears in present legislation.

After the brief experience of two years (1844 and 1845) there was a return to the county plan of assessment, which was possibly suggested by the apparent ease with which the precinct assessor accomplished his task

under the conditions stated above, since with little property and few inhabitants it would appear unnecessary to multiply officers. The county assessor also was authorized to appoint a deputy if he deemed such assistance necessary. This law, however, was in effect for only one year. Under the law of 1846, relating to the assessor, the sheriff was required to assume the duties formerly assigned to the special county official. Again the county records reveal the actual operations of the law in the returns of the county assessor for 1846.

Until 1853 the sheriff continued to perform the duties of both the assessor and his own ministerial office. Then the township once more became the area for assessment under an officer elected therein. It was not long after the passage of this act that Governor Hempstead insisted that he could say nothing in favor of the township possessing this authority. But the situation was not changed until 1857, when for a brief period the county regained the authority to make all the assessments.

Directly opposed to the view of Governor Hempstead was the opinion of Governor Grimes, who immediately preceding the passing of the law of 1858 — which was the final act to this date on assessment areas — observed in his biennial message that "there must ultimately be a thorough township organization throughout the State, and the sooner the people become accustomed to it, the less difficult and burdensome it will become, and the more perfect and satisfactory will be the transaction of public affairs". This observation, it appears, referred especially to the burdens of townships in conducting their own affairs relative to taxation. It is, moreover, reasonable to conclude that in passing the act of 1858 the General Assembly was influenced by the Governor.

That the township has been able to handle the function of assessment seems to be recognized in legislation relating to it during the greater part of its history. It is worthy of notice that the first officer made elective in the Territory of the Northwest was the assessor. It would, perhaps, be difficult to account for the frequent shifting of the function of assessment between county and township and the approach at certain periods to a compromise plan whereby the county board of equalization consisted of the assessors from the several townships. If at any period such a county-township plan was really in force, it was under the statute of 1853 which provided for the comparing of assessments after a classification had been previously made.

The only fault that could be urged against this system, if the county is ever to be the unit, is the election of any one to the office of assessor rather than his selection by appointment from a number of persons having special qualifications.

While the difficulties connected with the assessment of taxes may have caused many changes in the statutes, their collection appears to have been a problem of no less importance, but one which did not produce any great modifications in the laws. Since there never has been an elective township collector in Iowa under any general act, no agitation has resulted for a return to some former system. The nearest approach to such an officer in the township was the constable who performed the function *ex officio* from 1842 to 1844; but his duty as collector was probably so identified with his ministerial duties as constable that the distinction was not prominent. Moreover, no such officer was provided for, even in any

optional act, until after the suggestion made by Governor Kirkwood that it might facilitate the collection of taxes if the township should be made the unit and an officer, to be paid by a percentage of the collections, should be elected. Notwithstanding the statement of Governor Stone in 1866 that any attempt to improve the assessment and collection of taxes would be an experiment that would be of doubtful expediency the law of 1868 was passed. This act, being optional with counties, would in no manner change the method of collecting by the county treasurer or his deputy where the new method was not adopted.

The following reference is sufficient to illustrate the delays incident to the collection of taxes in a single township in 1863. In the instructions to collectors (deputies) may be found the penalties and delinquencies for the six years from 1857 to 1862, inclusive. For 1857 there were twenty-nine taxpayers who had failed to meet the small levy assessed to them; fifty-six had likewise failed in 1858; sixty-seven were delinquent in 1859; one hundred and nine in 1860; fifty in 1861; and sixty-eight in 1862 — making a total for the six years of nearly four hundred who had not fully paid their assessments. The township here referred to was entirely rural and is now one of the richest in the county of which it is a part.

It is clearly shown in the voting of taxes in aid of railroad construction that the electors can not be trusted with complete freedom in such matters. Under the first of these acts it was within the power of a few to compel the township trustees to levy large sums upon the local population without any provision being made for receiving full value in exchange. From what occurred it is clear that the taxpayer needed protection against him-

self; and the revision and repeal of laws which followed appear to have had that end in view. Initiative on the part of taxpayers may have been desirable; but hasty actions in the hope of possible advantages to the immediate community, actions which were later corrected in the remedial legislation relating to township taxes in aid of railroads, must have suggested further legislation which aimed to prevent a repetition of these occurrences, without taking away the privileges of the elector.

A provision of the first law relating to local government in the Territory of the Northwest authorized the overseers to levy and collect a tax for the support of the poor. Moreover, while limited to a single assessment, the tax once assessed could be repeated as often as the needs of the poor might require. Such provisions, however, did not prevail at any time in the history of the Iowa township; but under the first act relating to such organizations in the Territory authority was given for the levy and collection of a township tax which had been approved by the electors. This did not necessarily exclude other provisions for the poor nor restrict the voters to any specific case. Other statutes declared that the county commissioners were responsible for the support of the poor — which would indicate a county fund for that purpose — while the immediate supervision as to the needs of individuals remained with the overseers. If funds for poor support were advanced by the township authorities these bore no special designation but became a final charge against the county. In a similar way the township has provided for the enforcement of the regulations of the board of health, since the immediate local authorities are the only administrative agents who are in a position to know the needs of the community.

XXII

THE CARE OF THE ROADS

Upon the establishment of Territorial roads the local authorities were immediately made responsible for those portions lying within the boundaries of their respective jurisdictions. The surveying, the platting, and the provisions for opening these first highways were Territorial functions, but the actual care and improvement of the roads after their location rested with the counties through which they passed. No more interesting phase of local development — suggesting not only individual but also community demands — appears in a study of the growth of a Commonwealth than the evolution of the public highways. To fully determine the influences bearing upon the location and subsequent changes in the earliest of roads one would be led into an investigation of the topography which limited the choice of routes, or into a study of the economic and social reasons for subsequent changes as settlements were formed and local areas acquired more influence. Sharply defined lines do not, to be sure, separate the periods when such influences were most pronounced, but that their effects may be traced through the local records is not to be questioned.

The townships, however, were not immediately concerned with the first roads established in the Territory of Iowa until they were made responsible for the care of all public highways within their borders, regardless of the authority by which such roads were first established.

It is true that the greater portion of this responsibility has been imposed through the establishment and location of county roads, which have usually been determined by section lines. But there are in the earliest established counties highways of the greatest usefulness which retain the original direction and in general the original route, for which at present the township must provide care. As suggested above, the early roads which connected centers of population and points supplying provisions of immediate necessity followed the "uplands" wherever possible. For this reason the main-traveled roads of the township did not and do not now always follow section lines.

Following the example set by the Territorial legislature in providing for the Territorial roads through appointed commissioners, the supervision of county roads as first established possessed the same general features. Indeed, one would be unable to determine by which authority the road was located without consulting the local records. Once established they became fixed routes of travel and were recognized as the principal highways of the county and township, while the subsequent changes, if any, were slight and made where they least disturbed the old lines. In townships of the later surveys, where there are no natural obstacles, "diagonal" roads do not appear; and the recent act providing for dragging districts would in such areas seldom require a district within the section, while in the older counties such districts would be numerous.

Before townships were authorized to provide for road officers the county authorities were receiving petitions at almost every session requesting the laying out of county roads connecting the main-traveled Territorial or county

highways in order that local settlements might be accommodated. While these new roads tended to follow section lines it appears that the first consideration was the accommodation of the petitioners residing within a given area.

Thus when the township authorities assumed charge of the public roads there were, in the counties which were first organized and in that portion of the Territory which first required means of communication, highways established by different authorities and in some respects for different purposes: that is to say, the Territorial roads connected points of Territorial importance, while county roads were established mainly to accommodate local interests. It may be said that the relation of the township to the county roads was not unlike that of the county to the Territorial roads, which were under county control as to improvement and care although established by special acts of the Territorial legislature.

From the appointment of road supervisors by the Governor of an extensive Territory to their election as subordinate officers of a township suggests a great range in the method of selection. Moreover, it is quite evident that in the legislation relating to roads there is an approach to local control as now established, for following the appointment of road supervisors by the Governor in Michigan, the judges of the district court were authorized to provide for road supervision in their respective districts. Later the authority over highways was transferred to the county court of quarter sessions, which was authorized to nominate as supervisors for each township in the county men whom the Governor should approve. Subsequently, the county commissioners were given full power to appoint the supervisors over the road districts

which they were authorized to establish, until finally the township electors secured the right to control directly or indirectly the selection of road officers of whatever rank.

Not all of these provisions are revealed in the laws relative to local government as enacted in Iowa subsequent to the establishment of the Territory in 1838; nor indeed while the country was under the jurisdiction of the Territories of Michigan and Wisconsin, for during that period the control had passed to the county board. If, however, the authority of the legislature in providing for the viewing and surveying of the Territorial roads is comparable to that of the Governor in establishing districts, one may conclude that there was a similarity in practice. While county authority was maintained for almost twenty years after the organization of the Territory of Iowa and different opinions have prevailed as to the best plan — that is as to county or township control — one may say that it is a debatable question only in so far as methods of making improvements and repairs enter into the matter.

There appears to have been a strong tendency toward decentralization in the evolution of the administration of the public highways following the first provisions in the statutes of the Territory of the Northwest. Furthermore, there were good reasons at first for the authority being lodged in the Governor or other officers occupying positions of large power, either executive, legislative, or judicial, since in the period when such laws prevailed roads were established over large areas and between points which were most in need of communication. Nor was any particular attention paid to any principle other than that of the most direct route, provided natural obstacles offered no resistance. Any unit of local govern-

ment, even if organized, possessed at first an insufficient population to provide for the care of the public roads as required: laborers must necessarily be drawn from such an extent of territory that boundaries of ordinary townships and counties would necessarily be disregarded. There remained then but two higher authorities, the Territorial government and the judges of the district courts, upon whom such responsibility could be laid; and this was the plan actually put into operation in the Territory of Michigan just before the Iowa country was attached to that jurisdiction.

But the rapid settlement of the counties in the Iowa country and the subsequent attachment to them of the newly organized outlying counties, as well as the almost immediate organization of townships, made it possible to omit any reference to authorities higher than the county in the provisions for the opening and improvement of the Territorial roads established by legislative acts. Moreover, it appears very reasonable that the counties should direct the work upon local roads until townships were fully organized and inhabited. That the township since its organization has retained the control over the improvement of roads ordered by the legislative or county authorities, with the single exception of the period from the organization of the Territory down to 1853, indicates either the effectiveness of such control or the inertia that custom sometimes produces.

It may be noted, also, that at the time when the county supervisor of roads was provided for in 1851 there was the provision for a deputy supervisor in the township, who, while acting under the county officer, was nevertheless limited to the township, and who appears to have been responsible for the township as a district. More-

over, it is apparent that this deputy supervisor was really the first township road supervisor for whom the law of 1884 made specific provision. Or, it may be that the township supervisor of roads as designated in the Michigan statute of 1817 suggested the deputy supervisor of 1851 and the further provision of 1884 which has been more fully set forth in recent legislation. If so, the power of appointment by a Governor is now represented in the powers conferred upon the township trustees.

The almost military authority given to the first supervisors under the statutes providing for emergencies in road construction, by which they might compel men subject to the road tax to labor upon the highways or pay the penalty, is of ancient origin; while "warning out" in ordinary work suggests the command which should not be disobeyed. These features of our present road laws are very similar to those incorporated in the early acts of the original States, while the principle of distributing the road fund over the township instead of confining the expenditure to the single districts is likewise old in its application. Contrary to this view was the recommendation of Governor Carpenter that road districts be organized on the same principles as independent school districts — a plan which might indeed arouse a spirit of local interest, but which would certainly be in opposition to the principle that roads are for all the people and all should bear the expense of construction and repair. It is the equitable distribution of the fund in the township which recent statutes require. Furthermore, it would appear that a strictly equitable distribution means not so much per mile over the entire district but rather the greatest good to the greatest number of people. If this be true the main-traveled roads will continue to be favored in the expenditures of each township as heretofore.

An authority more or less centralized has determined the course of these highways; while subsequently the district system with its army of overseers has provided an indifferent care, and the attention anticipated by the laws through efficient labor at the right time under competent management has not resulted in permanent highway improvement. It also required suggestions from at least two Governors to secure even the privilege of adopting the single township road district. Under the first act its adoption depended upon petition, and this being an optional matter a leadership of sufficient interest to personally solicit support for the measure must be present. It was, therefore, but a continuation of this law, that after its purpose had been defeated by optional clauses, it was made mandatory and the township became a single road district. Again the usual reaction, due, it appears, to the loss of immediate local control of funds or labor and change in long established customs, demanded a repeal or amendment which resulted in a provision for a modified district system after the "try out" for two years under the single supervisor plan. Indeed, it seems that there is now no limit to the frequency of the two-year changes if the sixty-five per cent petition for the multiple system, or the fifty per cent for the single district is obtainable. It remains to be seen which of these two opinions will prevail and whether such a brief trial will produce any definite results.

In a prairie State, which for the greater part comprises lands where roads may be established on the section lines, the "roads and cartways" formerly provided for in the early statutes to be laid out under the direction of the township trustees are seldom necessary, since full accommodation is secured through the Territorial, State,

or county roads, for fractions of which the township has been held responsible.

To meet the demands due to modern means of travel the country roads are, by recent legislation, to be supervised by two general officers of the township under the appointment and direction of the trustees. This appears to be an extension in the application of the laws relating to the single district; and the explicit directions given by the last act to the township trustees suggests the "shall" of later acts in situations where "may" was formerly used. The former provision for guide-boards declared that they "shall" be erected; the last provision is that they "may" be erected. At first, in 1884, it was provided that townships "may" adopt the single district plan; now they "shall" adopt it, with the trial provision mentioned above. The trustees "shall" divide the entire township into districts for road dragging purposes. This, moreover, is a much more complicated system than the formation of the former districts for road work under the supervisor and would, moreover, demand so much time and attention from not only the trustees but also from the clerk that it supports the suggestion made below regarding a special officer giving full time to such work.

While formerly the trustees were held responsible for the destruction of noxious weeds upon the highways or private property, there appears to be a division of authority under later acts; that is to say, the highways are now to be cleared by the superintendent or contractor, who is the same individual in the interpretation of the statute, while the general supervision over private property remains with the trustees. Such a division would destroy absolutely any beneficial results if either authority should fail to perform the functions provided in the law, for the destruction of weeds demands undivided attention.

XXIII

THE PERSISTENCE OF THE TOWNSHIP

While it is true that the original town or township of the New England type has not prevailed throughout the western States, the characteristics which that original organization possessed have prevented the abolition of the township altogether, even where the tendencies appeared to be greatly in favor of a larger unit in local government and administration. The disposition of the people to participate in the management of local matters, to take part in local administration, or to be represented in some body authorized to make regulations of immediate application, are some of the factors which make for the maintenance of township activities.

The spirit of self-government which produced the original township tends to retain certain prerogatives regardless of the economy of administration which might be secured through proposed changes. And the local area — not too large for all of its citizens to recognize its unity and possessing certain privileges and obligations that are distinctly expressed in the statutes for even the lowest type of township organization — seems to suggest a relation that unites citizens in their ideas of local government and in their notions of what constitutes a unit in administration. Furthermore, the increase in privileges or the consolidation of interests under certain statutes will not detract from this spirit of local unity but will rather cause an enlarged appreciation thereof. And so

the preservation of some form of township organization seems to be assured.

Where the town meeting has been retained with power to adopt regulations for local affairs few statutes of a general nature have been necessary to provide for the internal needs of the township, while under such an organization the citizens have possessed the greatest opportunity to illustrate the spirit of self-control and to prove the desirability of the township meeting in training men for civic duty. The exercise of what appears to be real legislative power in the lowest unit of administration must certainly increase the interests of the elector in the higher forms of political organization.

But where the town meeting has not been at any time a part of the experience of men and where the only occasion for any assembly of the citizens is that of the annual or biennial elections, there is little to promote loyalty to the local government unit and prevent its entire subordination to higher interests. It appears that under a perfect administration the most desirable and most educative civic agency in the training for that citizenship which possesses the requisite knowledge in reference to local affairs would be the representative township-county system with the prerogatives of the town meeting still a feature. This system is, indeed, regarded as the strongest and highest form of township organization, since it affords the electors not only a voice in the administration of immediate local interests but also in those questions which determine the actions of the next higher unit in local government, thus producing an appreciation of the importance of the township and its place in the Commonwealth.

Had there been no previous influences operating

among the first settlers of the western Territories and had they emigrated from States wholly free from township organization, as indeed some did, there appears to be good reason for supposing that they would have formed units of local government similar to the township. Under the grouping in settlements as they were made in the various sections of eastern Iowa the conditions surrounding the first settlers of New England were in some degree repeated, and while the law permitted the organization of townships before any real demand for them had arisen — a law which was applied almost immediately — there were questions that required united action. For instance, the early settlers were called upon to vote for Territorial officers; road districts were established by central authorities but placed under the control of a local officer who ordered local residents to labor upon the highways; the post office located upon an established mail route determined a center about which settlements were made; while protection of personal property and land claims led to united if extra-legal action, which under the system of government survey was usually confined to a congressional township. The precincts which preceded the township, and in some instances followed lines almost identical with the boundaries of future townships, suggest the natural tendencies when the whole area is adapted to settlement by a people who by their own labor cultivate the soil.

As long as only a few settlers were scattered over large areas and the administration of local matters was of little consequence, the peace officers being sufficient for immediate needs, no organization appears to have been necessary for the small areas since the larger unit served all purposes. As a matter of fact, however, the self-

government notion was evident as soon as conditions required attention to local needs. The economy of the precinct system was insufficient as an inducement to prevent an early demand for some further local authority. And when a spirit of this nature was urged into action by the first Governor of the Territory, and when later Governors continued to call attention to the importance of the township in local matters it seems that the inherent notion of what constituted a local government in which the individual citizen had a direct interest could not be changed unless the very nature of those citizens had become impaired through the lack of exercise of those functions that make men of some consequence in the community.

XXIV

THE CONSTITUTIONAL STATUS OF THE TOWNSHIP

By the law of 1842 the township was declared to be a body corporate and politic. It was not until 1880, however, that the Supreme Court of Iowa was called upon to determine its powers. Then, under the provisions of the *Code of 1873,* the court held that the township was not a corporation, but a subdivision of the county for administrative purposes only. Other decisions by the same court have distinguished the township from the county and school district in this particular, namely, that the former is not now defined in the law as a corporate body while the county and the school district are so designated.

In 1906 upon a question involving the relation of an incorporated town to the township lying without and adjoining the same, the Supreme Court held that the township is a "*quasi* corporation", and that it is to be regarded as a municipality within the meaning of the act relating to such questions as came before the court in this case. This decision placed the incorporated town and the adjoining township in a different relation from that assumed by the local officers in their action which brought on the suit.[331]

Probably no questions have ever been raised which had for their definite purpose the securing of a decision upon the powers of the township and its officers. Incidentally, however, it has been held by the highest court

of the State that the organization of one township through the division of another is not completed until the new officers have been elected and have entered upon the discharge of their duties.[332] It appears that the electors of any township may force a division upon a petition presented to the county board of supervisors who are allowed no discretion in the matter. If the requisite number of names are attached to the petition and all the provisions of the law are complied with the county board must establish the township.[333] Furthermore, it has been held by the Supreme Court that the legality of the organization of the township may not be questioned because of a failure to comply with the law in the first election.[334]

It has been declared also that the constitutional limitation as to indebtedness imposed upon corporations does not apply to townships. For that reason, it appears, the law has provided that no debt may be incurred by the township for which a tax has not already been levied; and where officers have exceeded their authority in such matters there has been little hesitation in declaring the transaction illegal and the creditor has been the one to suffer the loss. For example, to purchase tools and machinery for the improvement of highways was a power conferred upon the township trustees very early in their control over roads. But they have never been permitted to make contracts for such equipment and pledge the credit of the township for payment. In a case of this character which came before the Supreme Court in 1882 the opinion handed down declared that if this could be done there would be no limit to which such indebtedness might be incurred.[335]

The general road fund of the township is available

for the compensation of the district road supervisor, and the payment of such claims may be enforced. The argument submitted to show that this must be a charge against the road district fund was not held as valid when reviewed by the Supreme Court.[336] Again, if money belonging to the general township fund is due, the township clerk may recover the same in his own name; but he is, in effect, acting for the township, which can not sue.[337]

The judicial and ministerial nature of functions required of township officers is apparent in some of the commonplace duties of the trustees relative to the poor, and also in the routine of the supervisors or superintendents of roads, since they are not only authorized to determine where work shall be done and, within limited periods, when it shall be performed, but they are personally to direct it.[338] The trustees are to determine also in the first instance whether a poor person needs aid, and they are then to decide upon the nature of that relief. They not only act thus judicially, but either as a board or individually they must see that such orders as they may choose to make are executed. Moreover, they are granted some freedom in their decisions and actions, for it has been said that when applied to for relief their duty is not to be determined by very rigid rules. They must exercise a wise discretion, and where humanity seems to require it they have full authority to act. This follows from the fact that they must often act promptly and without taking time to examine carefully into circumstances which would affect the case. So much confidence is placed in these officers in the supervision of the poor in their township that if they act in good faith, even though it may appear not wisely, and without abusing the power granted them, their acts may not be questioned.

They may thus bind the county to pay the expenses incurred in performing such acts of relief.

The disagreements between the townships and the county in allowances for the care of the poor or for expenses connected with the local board of health have usually arisen through defective records or proceedings in which some minor provision of the law has not been complied with. For instance, it has been held by the highest authority that the duties of the trustees can not be delegated: that is to say, they must personally decide who are entitled to assistance at public expense. They must also certify that statements are correct; and the importance of the minor officers has been emphasized inasmuch as they are held responsible for the personal knowledge that can be secured only through having acted as the law required.[339]

As officers of the township it appears that the trustees can not maintain an action to recover money due from the county, although the latter may be responsible for the claim. They are not the real parties interested, or as the statute stipulates, not the "trustees of an express trust" within the meaning of the law. Such a case is illustrated in the expenditure of money collected through a township tax to satisfy the claims of a physician who rendered service for the board of health, the township trustees thereafter endeavoring to collect the amount from the county.[340]

A provision of the law of 1872 by which the incorporated town and that portion of the township lying without the town might be organized as separate townships has been productive of confusion.[341] For example, it has required the opinion of the Supreme Court to determine whether the assessor elected in the incor-

porated town was a township or a town officer; and only upon the status of the voters, who were described as belonging to the territory designated as a township, was the assessor within the town limits declared to be a township officer. In this instance it was granted that the choice might have been made at the municipal election, but the suffrage determined the jurisdiction of the officer.[342] By a later decision, however, it was determined that in cities acting under special charter and organized as a separate township the assessor must be selected at the general election in November.[343]

An incorporated town including fractions of two or more civil townships must be considered as one assessorial district, and so an attempt of the county board of supervisors to equalize assessments between the fractions of townships would be equivalent to the equalizing of individual assessments in the township. But this they are not permitted to do, since under such conditions this is a prerogative of the city council which would correspond to the board of trustees in equalizing the assessments for the single district.[344]

Until the question of jurisdiction arose between the authorities of towns and surrounding townships, or between the townships and the county, or until some claim was disputed there could be no decision that would establish the status of the township. It seems rather remarkable that this matter was so late in reaching the Supreme Court, but this may be accounted for perhaps by the fact that new jurisdictions were not at first interested in many problems that later assumed features of some importance.

XXV

THE IMPORTANCE OF LOCAL OFFICERS

The efficiency of legislation providing for the administration of local affairs, or the final enforcement of State regulations, or the truthful collection of information which may be desirable in summarizing conditions upon which legislation may be based will depend finally upon the official who is elected or appointed to perform certain duties. It is well known that a failure at the lowest point in administration weakens the entire system. Of special importance is the faithful collection of data. For instance, the assessor has been assigned at various times the task of collecting statistical information, which unless faithfully done would make the whole work of little value, if not entirely misleading. Again, the regulations of the State Board of Health would be of no value in a community with a careless and indifferent local board. A late act providing for a State Fire Marshal will be found defective or worthless if the requirements of the law are not met by the local officers. Furthermore, if laws are thrust upon a community before it fully comprehends their meaning or before it has expressed any demand for such legislation, the results will be unsatisfactory. Indeed, the local official who will meet the expectations of the lawmakers in such instances is a rare personage.

One may not conclude, however, that the failures which occur at this point in administration are due

wholly to indifference or inefficiency on the part of the individual charged with certain functions which have involved often the comprehension of a new and untried statute. The best and wisest of men have sometimes been troubled with the interpretation of the law when it was unaccompanied by any illustration or precedent which might serve as a guide. Doubtless, too, many local officers have not felt the responsibility of their position for the very simple reason that they never have been confronted with the facts which would reveal to them their real relation to the government of the Commonwealth.

The limited view or the narrow conception of duty which the environment may determine must of necessity react on the individual who has not at some time come into vital contact with the larger units of administration. Clearly this is the exact situation in which many officers find themselves when selected to perform certain functions. And unless some uncommon effort is made it seems quite unreasonable to expect from them the thoroughness in the discharge of their duties which ought to prevail without any interruption in all local matters. It would appear to be a profitable plan, therefore, to place before such individuals something of the history, something of the dignity, and something of the fundamental nature of their offices.

XXVI

THE PRESENT DEMANDS UPON TOWNSHIP OFFICIALS

While the principle of election should for obvious reasons be maintained as far as practicable in the selection of officers in all departments of local government and administration, the time seems to be fast approaching when it will require more than ordinary experience and training to meet the demands of the law under the rapidly increasing number of functions imposed upon the administrative agents of the township. The petty officers of the New England and the western townships are no longer mentioned in the statutes. Instead, their duties — which were, to be sure, of a minor nature — have been assigned to other officers who could not be dispensed with.

The modest demands made upon the township trustees when only a few families resided within their jurisdiction and when only a single road, which was seldom traveled, required their attention, have expanded until the general supervision of township affairs requires attention to a large number of details covering many subjects. With roads upon every section line to be cared for, with drainage areas to oversee, with jury duty in determining individual cases of disagreement in drainage outlets or in the assessment of damages as fence viewers, with services as a board of health or as a board of equalization, and with the supervision of the poor within the township, the trus-

tees are not only given large powers but they are held responsible for the discharge of a great many separate and distinct functions.

The great majority of the men who perform duties in the service of their fellow citizens and who fulfill the obligations they assumed in qualifying for the offices to which they may have been elected in the subordinate districts, probably did not seek such preferment and responsibility. It is, moreover, probably true that they have felt that they were not fully compensated for their services. But the occasion demanded men, and they have served under a constantly increasing variety of demands upon their time and patience. Of such the trustees are an example. If it were possible to compare the time necessary to accomplish all that is now required of the trustees with the hours employed in meeting the demands in the early years of township government in Iowa, before so many functions had come to form a part of their official duty, one could better appreciate the increase in responsibility.

Not only is this true of the trustees, but also of the township assessor and the township clerk. The imposition of special requirements has made it necessary that such officers should be possessed of more than ordinary skill if errors do not follow an attempt to comply with the laws under which they act. In every instance where a new provision has affected the functions of the trustees, the clerk has been in some measure required to follow their procedure. In many instances what appears to be a modest demand as provided in the law may become a matter of large responsibility when put into operation.

If the tendency of the past is to form a basis for judgment, it appears that a demand for officers selected

according to special fitness for certain administrative departments will be made not far in the future. How they shall be selected, whether by appointment under certain restrictions and after a demonstration of reasonable claims for preferment, or by election as at present, can not now be determined. But if efficiency is the aim in public service it is fair to assume that persons called upon to perform duties requiring skill can not be selected by means of the ordinary ballot. The sooner this fact is realized the better will be the results; for efficient service can not be postponed without serious loss — not only in the public service itself but also in the confidence of the people in their institutions.

The reaction that has followed the trial of certain legislation may doubtless be traced to the fact that in the administration of the statutory provisions, which were not necessarily bad, the results were unsatisfactory because of inefficient effort. Results of this character lead only to a demand for new legislation which may be no better than the first — at the same time increasing the bulk of the laws without making progress. If any agent of the local government needs to be endowed with a large measure of appreciation of his duties, it would appear to be the one selected for the lowest administrative district.

It could not be foreseen when local government in Iowa was first established that in the developments to follow the provisions then made would soon prove inadequate. The larger problems did not appear for many years, and then they came in rapid succession, requiring the overloading of offices already provided for. No additional assistance through the creation of a different system appears to have been proposed. During the

greater part of the history of the State the same general program has been carried out: the same quota of officers have been elected for the township as if no demand had arisen for modifications. In no other instance has such permanency been maintained in the official force provided for the management of the affairs of an administrative area. Whether this is due to satisfaction with results in the conduct of local matters or to inertia is difficult to determine; that it may continue without any radical change is scarcely possible.

NOTES AND REFERENCES

NOTES AND REFERENCES

[1] The county of Dubuque as originally established comprised all that territory to which the Indian title had been extinguished, lying west of the Mississippi River and north of a line drawn "due west from the lower end of Rock Island to [the] Missouri river". All the territory south of this line, north of the State of Missouri, and extending westward to the Indian country was included in the county of Demoine.

The act of Congress attaching the country west of the Mississippi to the Territory of Michigan was approved on June 28, 1834; and the act of the Legislative Council of the Territory of Michigan establishing the counties of Dubuque and Demoine was approved on September 6, 1834.

The boundaries of the first two townships established in the Iowa country under the laws of the Territory of Michigan, being coincident with those of the two original counties of Dubuque and Demoine, were not unlike other townships in that Territory. Neither were these townships larger than others since the entire northern half of the peninsula above Saginaw Bay appears to have comprised a single township. In the Wisconsin district, moreover, names of townships such as the "Township of Howard", the "Township of Green Bay", the "Township of Mason", the "Township of Milwalky" appear upon a map of 1839 without any indication of limits determined by county boundaries, while in the earlier settled parts of Michigan the name of the single township occupies a conspicuous place upon the outline of each county. Thus it seems to be clear that the lawmakers of Michigan Territory in 1834 intended to make the township a permanent and important feature in the government of the attached territory.

While these townships of Julien and Flint Hill have occupied an important and interesting place in Iowa history, they appear to possess the distinction also of being the first townships established west of the Mississippi River. Limited at first only by the boundaries established by treaty with the Indians who claimed the region, these original areas have been reduced until now they are recognized as ordinary civil administrative districts.

[2] *Laws of the Territory of Michigan*, Vol. III, p. 1326. When the county of Saginaw, Michigan Territory, was set off in 1822, it included thirty-six congressional townships. In 1831 there was organized the civil township of Saginaw which comprised the entire county. Subsequently the boundaries of the county were changed to include but thirty-two congressional townships;

and thereupon the county was organized, leaving the former Saginaw township in two counties, four congressional townships lying in Oakland county. — *Michigan Pioneer Collections,* Vol. VII, p. 261.

[3] *Laws of the Territory of Michigan,* Vol. II, pp. 317, 322.

In the township of Bellevue, including the entire county of Eaton, Michigan Territory, the first town meeting consisted of four men — that is, all who were entitled to vote in the county. They selected the judges of election as provided, and at the same time elected themselves to the eight or more chief offices in the township.— *Michigan Pioneer Collections,* Vol. III, p. 387.

[4] *Records of the County Supervisors,* Des Moines County, Session of September, 1835, Book I, 1835–1840, in the office of County Auditor, Burlington, Iowa.

[5] *Records of the County Supervisors,* Des Moines County, Session of November, 1835, Book I, 1835–1840, in the office of County Auditor, Burlington, Iowa.

[6] *Records of the County Supervisors,* Dubuque County, Session of May, 1836, Book I, in office of County Auditor, Dubuque, Iowa.

[7] An act establishing the Territory of Wisconsin, reprinted from the *United States Statutes at Large* in Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, p. 78.

[8] *Laws of the Territory of Wisconsin,* 1836–1838, p. 64.

[9] *Records of the County Supervisors,* Lee County, Sessions of April and November, 1837, Book I, in office of County Auditor, Fort Madison, Iowa.

[10] *Laws of the Territory of Wisconsin,* 1836–1838, p. 144. In this act there is an apparent separation of township and county duties.

The first board of county commissioners for Dubuque County met under the laws of Wisconsin on April 2, 1838, and on the same date the board met for the first time in Cedar County.— *Records of the County Commissioners,* in the office of the County Auditor.

It was in 1802 that the Legislative Assembly of the Territory of the Northwest made provision for the first meeting of the electors in the township, which was to be called on the authority of the court of general quarter sessions by virtue of a warrant directed to the constable of the township.— Chase's *Statutes of Ohio,* Vol. I, p. 344.

[11] *Laws of the Territory of Wisconsin,* 1836–1838, p. 139.

[12] *Laws of the Territory of Wisconsin,* 1836–1838, p. 165.

Four election precincts were established in Lee County in March, 1838. In the same year there were but three such precincts in Dubuque County.

In the latter county this number had increased to eleven in 1841 — the year in which townships were established and organized in Lee County. In 1838 there were seven precincts in Scott County, which at the time included Clinton County. In May, 1839, there were thirteen precincts in these two counties. After the organization of Clinton County in 1840 the boundaries of eight precincts are recorded in Scott.

[13] *Laws of the Territory of Wisconsin*, 1836–1838, p. 177.

In 1825 the Governor and Legislative Council of Michigan Territory, upon whom such power of legislation had been conferred in 1823, were authorized by the laws of the United States to "divide the said territory into townships, and incorporate the same, or any part thereof; to grant, define, and regulate the privileges thereof, and to provide by law for the election of all such township and corporation officers" as might by law be designated.— Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 68.

[14] *House Journal*, Territory of Iowa, 1838–1839, p. 5.

[15] *House Journal*, Territory of Iowa, 1838–1839, p. 90.

[16] *Council Journal*, Territory of Iowa, 1838–1839, pp. 88, 90, 100, 119.

[17] *House Journal*, Territory of Iowa, 1839–1840, pp. 11, 12.

[18] *House Journal*, Territory of Iowa, 1839–1840, pp. 26, 29, 33, 39, 43, 49, 59, 162, 174; *Council Journal*, Territory of Iowa, 1839–1840, pp. 43, 46, 97, 108, 115, 116, 142. The select committee was composed of Messrs. Hastings, Summers, Lash, Patterson, Hawkins, Bailey, Mintun, Cox, Wheeler, and Walworth.

[19] *Council Journal*, Territory of Iowa, 1838–1839, pp. 43, 44. The communication referred to reads as follows:

"*To the Hon. Jesse B. Browne,*

"*President of the Council:*

"SIR: The receipt of a resolution adopted by the Honorable the Legislative Council on the 21st inst., requesting the Secretary of the Territory to furnish one or more copies of the acts passed by the Michigan Legislature in 1834–'5, is hereby respectfully acknowledged.

"It is regretted by the Secretary that he is unable to comply with the precise terms of the resolution in question, but, if special reasons exist which may, in the estimation of the Honorable the Legislative Council, render the laws of Michigan of 1834–'35 peculiarly desirable, the Secretary, upon receiving a formal intimation to that effect, will use all due diligence in procuring the same, although it is doubted whether they can be procured and transmitted to this place, in time to render their valuable contents

available to the Legislature of this Territory within the period prescribed for the continuance of the session.

"It is, however, gratifying to be enabled to transmit herewith the Laws of Michigan of 1837–'38, a copy of which is furnished for the use of each House, together with a copy (also for each House) of the following laws, to wit:

1. The acts and resolutions of the second session of the twenty-fifth Congress of the United States, 1837–'8.
2. The General and Local Laws of Ohio, 1837–'8.
3. The Laws of Maryland, 1837–'8.
4. The Laws of Pennsylvania, 1837–'8.
5. The Laws of New Hampshire, 1838.
6. The Resolves of the State of Maine, 1838.
7. And (as already stated) the Laws of Michigan, 1837–'8.

"The Honorable the President of the Council, is respectfully requested to order the transmission of one copy of each of the foregoing compilations, to the Honorable the Speaker of the House of Representatives, accompanied by a transcript of this communication, together with an expression of the highly respectful regard, with which I have the honor to be, and remain, your very obedient servant,

WM. B. CONWAY,
Secretary of the Territory."

The Secretary of the Council was ordered to carry out the suggestions in the last paragraph of this communication, and to transmit to the House the copies of the "foregoing compilations" as requested by the Secretary of the Territory.

A copy of the *Catalog of the Territorial Library,* issued in 1839 at Burlington, is on file in the Masonic Library at Cedar Rapids.

[20] *Laws of the Territory of Iowa,* 1839–1840, p. 47; also *The Iowa Journal of History and Politics,* Vol. IX, p. 158.

[21] *Laws of the Territory of Iowa,* 1840–1841, pp. 92, 93.

The township elections of April 8, 1841, in Des Moines County resulted in the selection of six justices of the peace, four constables, two town clerks, seven trustees, five treasurers, six overseers of the poor, eleven supervisors of roads, four fence viewers, and eight school inspectors. Nine townships were organized in January previous to this election.

In February, 1841, the clerk of the board of county commissioners in Lee County placed a notice of the township organization in his county in the *Burlington Hawkeye and Iowa Patriot,* Vol. II, No. 26, February 4, 1841. This was in accordance with the provisions of law. It gave notice of the elections in the townships as established by the commissioners at the January session, and was published by their order. The counties of Van Buren and Louisa were also formed into civil townships in 1841.

Townships were organized in Jackson County in January, 1841, by order of the county commissioners. At the October election in 1840 the question of organization had been submitted to the electors of the county and approved. Many subsequent changes occurred by the division of the nine townships then organized. The township records for fifty-nine years kept by the officers of Maquoketa Township, Jackson County, have been preserved.— Ellis's *History of Jackson County,* 1910, pp. 57, 610.

[22] *Laws of the Territory of Iowa,* 1841–1842, pp. 97–103.

In the case of the Township of West Bend *et al v.* Munch *et al* in 1879 it was decided by the Supreme Court, Judge J. H. Rothrock writing the opinion, that townships are not "corporations", that under our system of government they are not authorized to sue and be sued. In other words the township "is no more than a legal subdivision of the county for governmental purposes". This decision was founded upon sections 3808, 3809, 3810 and section 394 of the *Code of 1873.*— 52 Iowa 132.

In a case from Jasper County it was held in 1882 that the township clerk could sue on the bond of a road supervisor, and that in this case the name of the clerk could be substituted for the township as plaintiff.— 59 Iowa 376.

It was on February 8, 1843, that the first township organization was completed in Dubuque County. Ten townships were then named and described in the records of the county commissioners.

[23] *Laws of the Territory of Iowa,* 1845, p. 27.

[24] *Laws of the Territory of Iowa,* 1845–1846, p. 76.

[25] *Laws of Iowa,* 1846–1847, p. 29.

[26] *Laws of Iowa,* 1846–1847, p. 34.

The polls at the first election in this precinct were to be opened by two justices of the peace, who were to act as the judges of the election.

[27] *Laws of Iowa,* Extra Session, 1848, p. 16. See also Van der Zee's *The Hollanders of Iowa,* p. 212.

Originally each individual township in New England was bounded and incorporated by special acts of the legislature. Moreover, this was true in the beginning in the Territory of the Northwest. See note 13 above.

Among the officers named in the records of Lake Prairie Township one finds the "fence viewer" and the "overseer of the poor" as separate officers, which was contrary to the law of 1842 as amended in 1845. This election occurred in 1848; but it appears that the Hollanders acted under the law of 1842.

Bremer County was organized into townships in 1847 — that is, into a single township. It was first attached to Fayette, then to Buchanan, and

finally to Black Hawk County. As a county it was organized after the commissioners were succeeded by the county judge.

[28] *Laws of Iowa,* 1848–1849, p. 136.

[29] *Records of the County Commissioners,* Scott County, Book A, p. 121; Book B, p. 53. In October, 1846, in dividing the township of Allen's Grove the west half became Liberty Township. In the same record, however, "Liberty precinct" is named.— *Records of the County Commissioners,* Scott County, Book B, p. 74.

The electors in unorganized counties were not allowed to vote for county or township officers for the counties to which they were attached.— *Code of 1851,* p. 21.

[30] *Code of 1851,* pp. 21, 40.

The county judge was required to preserve plats of the congressional townships in his county so divided into sections and quarter sections that he might be able to indicate by the letter "S", or in some other manner, the sales as they occurred in accordance with reports from the land office.— *Code of 1851,* p. 23.

[31] *Laws of Iowa,* 1852–1853, p. 23.

A precinct was formed in Village Township, Van Buren County, wherein the county judge was authorized to appoint the judges and clerks of election in the beginning. Thereafter these officers were to be elected by the qualified voters. They were further authorized to select one justice of the peace and one constable. For all purposes, however, other than elections, the precinct, according to the statute, should remain a part of Village Township. — *Laws of Iowa,* 1852–1853, p. 128.

The general election law of 1858 provided that all township officers should be chosen at the October election.— *Laws of Iowa,* 1858, p. 403.

[32] *Laws of Iowa,* 1860, p. 17.

[33] *Revision of 1860,* p. 359.

In forming new townships the board of supervisors were required to cause a full description of the same to be preserved in the records of the county and also in the records of the township.— *Revision of 1860,* p. 74.

[34] *Revision of 1860,* p. 48.

The New York law of 1703 relating to supervisors, which is the fundamental source of this form of county government, names as the chief duties of these officers "to compute, ascertain, examine, oversee, and allow the contingent, publick, and necessary charges of each county." This appears to be the principal business of the board of supervisors in Iowa at this date. See Howard's *Local Constitutional History of the United States,* p. 111.

A circular letter issued by the board of supervisors of Jones County in 1861, the first year of the existence of such a board, recommended a change in the then existing laws whereby local matters, such as township taxes and some other township affairs, need not come before the supervisors.— *Express and Herald* (Dubuque), September 6, 1861.

[35] *Laws of Iowa,* 1862, p. 24.

Any owner of land contiguous to any unincorporated town was empowered to plat the same and thereafter township and county officers were required to treat the tract as part of the original plat.— *Laws of Iowa,* 1862, p. 32.

[36] *Laws of Iowa,* 1862, p. 72; *Laws of the Territory of Wisconsin,* 1836–1838, p. 64.

[37] *Laws of Iowa,* 1862, p. 82. A condition attached to the right of petition frequently requires the petitioner to pay the costs in instances where the request is not granted.

[38] *Laws of Iowa,* 1866, p. 112; *Code of 1873,* p. 68; *Laws of Iowa,* 1892, p. 86; and *Laws of Iowa,* 1906, p. 79.

The local board of health must give due notice of all regulations adopted by publishing the same in a newspaper when possible, and elsewhere by posting in "not less than five public places". The law of 1906 so modified the requirements as provided in the *Code Supplement of 1902* that expenses for care in a detention hospital or pesthouse were not to be apportioned among the individuals cared for in the first instance, and then allowed if they were unable to pay; but bills in such cases were to be certified to the county board and when paid a tax must be levied in the township for one-third the expense as in other cases under the jurisdiction of the board of health. By an amendment of 1904 townships were charged with expenses incurred by the removal to another township of any person affected with a contagious disease, if done with or without the consent of the board of the township to which such an individual was removed.— *Laws of Iowa,* 1904, p. 102.

[39] *Laws of Iowa,* 1868, p. 54. The first of these acts left large opportunity for payments of taxes without value received by the resident taxpayers of the township.

[40] *Laws of Iowa* (Public), 1872, pp. 2, 59.

[41] *Laws of Iowa* (Public), 1872, p. 86. Such a transfer must be completed before January 1, 1873; and no tax thus transferred should become delinquent until the road which was to receive it was completed and "running to the township voting the tax".

[42] *Laws of Iowa* (Private), 1874, p. 40. Where taxes had been paid into

the county treasury under the provisions of a railroad tax levy, and thereafter forfeited, the amount must be "refunded to the parties entitled thereto".

[43] *Laws of Iowa,* 1876, p. 110.

[44] *Laws of Iowa,* 1878, p. 80.

[45] *Laws of Iowa,* 1878, p. 141.

[46] *Laws of Iowa,* 1880, p. 187.

[47] *Laws of Iowa,* 1884, p. 164; *Code of 1897,* p. 737; *Laws of Iowa,* 1902, p. 53.

By the law of 1884, the taxpayer was permitted to contract with any company so aided to pay "in labor upon the line of said railroad or in material for its construction", or other manner, which might comply with the terms "stipulated in the notices of the election". Laborers were entitled to a lien upon the township tax for payment.

[48] *Laws of Iowa,* 1882, p. 63.

[49] *Laws of Iowa,* 1896, p. 34.

The law provided that a copy of section five which relates to the authority of the clerk as custodian and his police powers, should be kept posted in the building at all times. Citizens of the township were entitled to the use of the hall "for all lawful purposes". Funds raised for a township hall and not used for such purposes on petition of a majority of the voters may be transferred to the township road fund.— *Laws of Iowa,* 1906, p. 14.

[50] *Laws of Iowa,* 1906, p. 12; *Laws of Iowa,* 1907, p. 13. This law has been put into effect to great advantage in Center Township, Cedar County, and also in West Lucas Township, Johnson County.

An amendment enacted in 1913 provides for a petition by a majority of the resident taxpayers which will compel the trustees to act in such instances. A contract may be terminated, however, by a majority vote of the township electors.— *Laws of Iowa,* 1913, p. 59.

[51] *Laws of Iowa,* 1906, p. 14.

[52] *Laws of Iowa,* 1868, p. 242.

[53] *Laws of Iowa,* 1870, p. 221; *Code of 1873,* p. 106.

In the case of special elections a meeting of the registry board was required to correct the lists. In 1886 townships lying outside of incorporated towns became separate precincts and the act practically repeals a portion of the statute relating to the registry of voters in townships.— *Laws of Iowa,* 1886, p. 187.

[54] *Laws of Iowa,* 1878, p. 63.

Trustees were required to be elected for three years in 1878. The canvassers were to determine by lot who should serve one, two, or three years, and thereafter one should be chosen annually.— *Laws of Iowa,* 1878, p. 11.

[55] *Laws of Iowa,* 1906, p. 28. It was necessary to provide by statute for all officers whose terms did not correspond with the biennial election period. The terms of the clerk, assessor, and road supervisors were extended to two years in 1880.— *Laws of Iowa,* 1880, p. 155.

[56] *Laws of Iowa,* 1907, p. 49.

[57] *Laws of Iowa,* 1870, p. 94. For a discussion of this board see Brindley's *History of Taxation in Iowa,* Vol. I, p. 71.

[58] *Laws of Iowa,* 1880, p. 102. Appeals from the decision of this board were permitted if made within sixty days after the adjournment of the board but not later.

[59] *Laws of Iowa* (Public), 1872, p. 60. See also *The Iowa Journal of History and Politics,* Vol. IX, p. 172.

The records of Johnson County furnish proceedings illustrative of the application of this law, in the year following its enactment.— *Minutes of the County Supervisors,* Book III, pp. 158, 159.

[60] *Laws of Iowa,* 1884, p. 108.

[61] *Laws of Iowa,* 1886, p. 50. It appears that a way of escape from an unsatisfactory organization or combination must be provided in every law.

[62] *Laws of Iowa,* 1892, p. 23. This movement toward consolidation is suggestive of economy in administration.

[63] *Laws of Iowa,* 1890, p. 40. This act became necessary to complete another found in Chapter I, of the *Laws of the Twenty-third General Assembly.* It related to one city only, Des Moines, which in 1885 had somewhat more than 30,000 population.

[64] *Laws of Iowa* (Public), 1872, p. 127; also *Code of 1897,* p. 260.

From the beginning of civil township organization in the Territory of the Northwest the tendency has been wherever possible to retain the congressional township boundaries.

[65] *Laws of Iowa* (Public), 1872, p. 129. This illustrates, also, the readjustment of civil township boundaries to secure identity with the district-township organization.

[66] *Laws of Iowa* (Public), 1872, p. 19.

[67] *Laws of Iowa,* 1876, p. 120; *Code of 1897,* p. 265; *Laws of Iowa,* 1902, p. 15.

[68] Chase's *Statutes of Ohio,* Vol. I, pp. 345, 346.

[69] Chase's *Statutes of Ohio,* Vol. I, p. 533.

[70] Chase's *Statutes of Ohio,* Vol. I, p. 665; Vol. III, p. 1530.

[71] Chase's *Statutes of Ohio,* Vol. II, p. 1452. See section nine of this act, and also section eleven which states that "whenever number sixteen or twenty-nine shall be in a township where there are not twenty electors, the trustees of the civil township in which surveyed townships may be situate, may lease the said section or sections"; and they were authorized also to apply the rents in accordance with the law.

[72] *Laws of the Territory of Michigan,* Vol. II, p. 317; Vol. III, p. 1038. See also *Laws of the Territories of Michigan and Wisconsin,* 1834–1836, p. 8, and Appendix, p. 1.

In towns (villages) that wished to become incorporated, in Wisconsin Territory, five trustees were permitted.— *Laws of the Territory of Wisconsin,* 1836–1838, p. 66.

Trustees for the school lands were also provided for in Michigan.— *Laws of the Territory of Michigan,* Vol. II, p. 695.

The Board of Trustees of the town of Burlington, Wisconsin Territory, "agreeably to an act of the Wisconsin legislature approved December 6, 1836", met at the office of David Rorer on April 29, 1837. The five trustees for which the law provided included George H. Beeler, Enoch Wade, George W. Kelley, Amos Ladd, and David Rorer.— *Records of the Trustees,* in the office of the City Clerk, Burlington, Iowa.

[73] *Laws of Ohio,* Third General Assembly, 1804–1805, p. 365.

[74] *Laws of the Territory of Iowa,* 1839–1840, pp. 48, 52.

[75] *Laws of the Territory of Iowa,* 1841–1842, p. 100.

[76] *Laws of the Territory of Iowa,* 1845, p. 27.

[77] *Laws of the Territory of Iowa,* 1839–1840, p. 52; *Laws of Iowa,* 1868, p. 242; *Laws of Iowa* (Public), 1872, p. 126. The trustees must order a new election, however, in all other instances of error in elections.

The trustees as judges of election would select from the voters in their township their apportionment of "good judicious persons" to be returned as jurors.— *Laws of the Territory of Iowa,* 1843–1844, p. 45.

[78] *Laws of Iowa,* 1878, p. 11.

[79] *Laws of Iowa,* 1906, p. 28.

[80] *Laws of Iowa,* 1878, p. 63. In townships in which no incorporated city or town was situated, an act of 1878 authorized the trustees on petition of any five inhabitants to appoint one or more inspectors of petroleum products, and to fix their compensation.— *Laws of Iowa,* 1878, p. 160.

[81] *Laws of Iowa,* 1892, p. 55. Whenever a change was made from the usual place of holding the elections in the township, the act required the trustees to publish for ten days a notice to that effect.

[82] *Laws of Iowa,* 1870, p. 94. For a discussion of this board see Brindley's *History of Taxation in Iowa,* Vol. II, p. 181.

[83] *Laws of Iowa,* 1876, p. 120; *Laws of Iowa,* 1896, pp. 34, 35.

Individuals owning cemetery plats were permitted under this act to survey, to plat, and to record lots in the township records as well as in the office of the county recorder.

[84] *Laws of Iowa,* 1906, p. 12; *Laws of Iowa,* 1907, p. 13.

As the law now reads it appears to be no longer necessary for the persons interested to canvass the township to secure petitioners. A majority of the trustees "may" levy a library tax.

The trustees may not become parties interested in contracts with their township.— *Laws of Iowa,* 1898, p. 18.

[85] *Laws of Iowa,* 1852–1853, pp. 79–83.

[86] *Laws of Iowa,* 1858, pp. 331, 334, 335, 339.

[87] *Laws of Iowa,* 1862, p. 192; *Laws of Iowa,* 1868, p. 138. These laws illustrate the increasing powers given to the trustees with reference to securing adequate equipment with which to keep the roads in repair.

[88] *Laws of Iowa,* 1884, pp. 218, 219. It is quite certain that this law giving such power to the trustees was enacted in response to a recommendation of Governor Buren R. Sherman.

[89] *Laws of Iowa,* 1902, pp. 31, 32; *Laws of Iowa,* 1904, p. 77.

[90] *Laws of Iowa,* 1906, pp. 14, 40, 41.

It was provided by the Thirty-fifth General Assembly that before beginning any general work upon the township road system the trustees must make application to the board of supervisors who should furnish an engineer to lay off such roads according to a specified plan, and all work should be done as established.— *Laws of Iowa,* 1913, p. 115.

[91] *Laws of Iowa,* 1911, pp. 18, 19, 65, 66. By means of a diagram illustrating the thirty-six sections of a congressional township one may locate the districts as designated in this act. The road on the north side of section one is "one, north"; on the south side of section one, "one, south"; on the east line of section one, "one, east"; and on the west side of section one, "one, west". Should a "meandering" road be found it would take the number of the section through which it passed.

By an act approved on April 22, 1913, all road districts were consolidated and all road funds were once more made a general township road

fund. After February 1, 1914, all district road superintendents should go out of office and the trustees should employ a superintendent for the entire township.— *Laws of Iowa*, 1913, p. 118.

[92] *Laws of Iowa*, 1894, p. 91. According to the act it is the duty of all persons to inform the chairman of the board of trustees of the existence of the Russian thistle. See also *Laws of Iowa*, 1913, pp. 122–125.

[93] *Laws of Iowa*, 1909, pp. 87, 88. Trustees may order hedges along highways trimmed when they deem it necessary, provided such hedges are not retained for protection. Originally trimming was required every two years, but an amendment in 1900 determines it as above.— *Laws of Iowa*, 1900, p. 38.

[94] *Laws of Iowa*, 1862, p. 69.

[95] *Laws of Iowa*, 1870, p. 198. What the causes were that led to the substitution of the trustees for the jury provided for in 1862 are not suggested in the act. Was the jury more expensive? Was it less prompt in action? Or was it due to the tendency to combine official duties?

[96] *Laws of Iowa*, 1888, p. 132.

[97] *Laws of Iowa*, 1904, pp. 67, 74. The establishment of drainage districts and the regulation and control of the same are largely county functions, leaving little for the township trustees to adjust where such areas exist.

[98] *Laws of Iowa*, 1906, p. 54; *Laws of Iowa*, 1909, p. 113.

[99] *Laws of Iowa*, 1868, p. 54; *Laws of Iowa* (Public), 1872, p. 86; *Laws of Iowa*, 1876, pp. 108, 112; *Code of 1897*, p. 747.

[100] *Laws of Iowa*, 1846–1847, pp. 129, 130, 160; *Laws of Iowa*, 1858, pp. 393, 396. The provisions of these acts were applied almost immediately, according to the record of the school fund commissioner of Johnson County. He recorded on May 18, 1848, the following:

"On the 6th of May 1848, the Trustees of Iowa City Township returned to my office an assessment & allotment with a plat of Section Sixteen in Township No. 79, North of Range No. 6 West of 5th Principal Meridian, as follows":

Here a plat of the section appears in the record, and it is certified to as having been made on February 12, 1848, by the trustees, J. H. Stover, B. P. Moore, and Martin M. Montgomery.

According to the record of the fund commissioner, this entire proceeding would be found also, in the records of the township. On page three this is written: "Recorded on the Township Book, page 45. Peter Ewing, T. Clerk".

On May 19th the plat of section sixteen in township eighty north, range six west, was filed for record and the township clerk certified to it as follows:

"I hereby certify that on the third day of May A D one thousand eight hundred and forty eight that David Crosier, Chauncy R Ward, and John W Alt, Trustees in and for the Township of Penn in the County of Johnson and State of Iowa, did subdivide, number and appraise the west fractional part of Section 16 in T. 80 R 6 as is laid down in the above plat — Number of Acres in the N. W. corner of each lot — Minimum price in the N. E. corner — Number of [parcel] near the center, and likewise ordered the same to be returned to the Fund Commissioner of Johnson County to be offered for sale. It is also ordered that Lots 14 and 15 be attached together, and in one sale. . . . J. Lyman Frost, Township Clerk."

It should be observed that in these records where the civil township included more than one congressional township the trustees were required to appraise and return, as described, all the school lands lying within their jurisdiction. Moreover, this work was not completed in Johnson County until 1856, since the last record, being a re-appraisement for which the law then provided, was recorded on February 13, 1858, as certified to by Eli W. Manville, Edward Tudor, and John W. Britton, trustees of Union Township, Johnson County, Iowa.— *Record of the School Fund Commissioner, Johnson County, Iowa,* pp. 1, 2, 3, 9, 484.

[101] *Laws of Iowa,* 1858, p. 58; *Revision of 1860,* p. 359.

The directors in the district township already organized continued to act for the new township and all districts until the next election.

[102] *Laws of Iowa,* 1862, pp. 204, 221.

[103] *Laws of Iowa,* 1868, p. 32.

[104] *Laws of Iowa,* 1866, p. 112.

[105] *Laws of Iowa,* 1884, p. 203.

[106] *Laws of Iowa,* 1909, pp. 152, 153.

As a board of health the trustees may command the services of the constable and enforce such regulations as are in harmony with the laws and prescribed rules of the State board.

[107] *Laws of Iowa,* 1866, p. 148; *Laws of Iowa,* 1868, p. 177; *Laws of Iowa,* 1870, p. 48. It is not often that all offices in the township become vacant, so that the county auditor would need to fill them by appointment.

[108] *Laws of Iowa,* 1868, p. 203; *Laws of Iowa,* 1870, p. 24.

A lawful fence in 1844 might be a "worm fence, composed of strong and sufficient rails, with stakes and riders, closely put up and in good

repair, five feet high; a post and rail, or post and paling, or post and board fence, well built and in good repair, four and a half feet high; and any other fences or obstacles, whether artificial or natural, which shall, in the opinion of the fence viewers of the township or precinct, be considered equivalent to any of those above described''.— *Laws of Iowa*, 1843–1844, p. 21.

The latest act defines a fence in terms of rails, boards, wire, either smooth, barbed, woven, or combined. In disputes the trustees must decide when such ''lawful'' fences have been maintained.— *Laws of Iowa*, 1909, p. 135.

If a fence upon a township line is in dispute the trustees from both townships are concerned. From the township where the applicant resides, the clerk selects two referees, from the other township the clerk selects one, and these three determine the matter as in other cases.— *Code of 1897*, pp. 814, 815.

[109] *Laws of Iowa*, 1876, p. 108; *Laws of Iowa*, 1884, p. 122.

It is understood, however, from the decision of the Supreme Court of Iowa that a township is not a body ''corporate and politic''.— See note 22 above.

[110] *Code of 1851*, p. 347; *Laws of Iowa*, 1870, pp. 24, 200; *Code of 1873*, p. 591; *Laws of Iowa*, 1876, p. 29; *Laws of Iowa*, 1884, p. 219; *Code of 1897*, p. 266; *Laws of Iowa*, 1909, p. 34.

[111] Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. II, p. 16.

[112] Chase's *Statutes of Ohio*, Vol. I, pp. 397, 398.

[113] *Laws of the Territory of Michigan*, Vol. II, p. 317.

[114] *Laws of the Territory of Michigan*, Vol. II, pp. 328, 329.

[115] *Laws of the Territory of Michigan*, Vol. III, p. 848.

[116] *Laws of the Territory of Wisconsin*, 1836–1838, p. 545.

It has been stated that among the duties of the township clerk was the recording of ''marks and brands'' of domestic animals owned in his township. When the functions of the township clerk were assigned to the clerk of the board of county commissioners, if he performed them fully, such records would appear upon the minute books of the county commissioners. Several pages of such descriptive ''marks and brands'' do appear upon the records of the clerk of the board of county commissioners in Johnson County, Iowa — for instance, Jesse Berry claimed as a mark ''a square crop off of each Ear''. David Switzer claimed, to the exclusion of all others, ''a square crop off the left Ear and two slits in the same Ear''.— *Records of the County Commissioners, Johnson County, Iowa*, Vol. II, pp. 75, 76, 77.

[117] *Laws of the Territory of Iowa,* 1839–1840, pp. 48, 49.

[118] *Laws of the Territory of Iowa,* 1841–1842, p. 100. The township trustees might levy a tax for poor relief without a vote of the township.

[119] *Laws of the Territory of Iowa,* 1845 (Extra Session), p. 27.

[120] *Code of 1851,* pp. 41, 55. In the case of a tie vote for a township office the parties were required to appear before the clerk, who with one trustee should supervise the drawing of lots to decide the matter.

[121] *Laws of Iowa,* 1862, p. 98.

[122] *Laws of Iowa,* 1868, p. 242.

An act of 1872 providing for the return of poll books required the trustees or clerk to deliver the original copy to the county auditor within two days from the time of the election.— *Laws of Iowa* (Public), 1872, p. 77.

[123] *Revision of 1842–1843,* p. 246; *Code of 1873,* p. 107; *Code of 1897,* p. 409.

[124] *Laws of Iowa,* 1852–1853, pp. 80, 81.

[125] *Laws of Iowa,* 1858, pp. 332, 334, 337, 339, 340.

[126] *Laws of Iowa,* 1858, p. 337; *Laws of Iowa,* 1868, p. 102.

The clerk had little discretion under the provisions of the law relating to the making of the tax list for the road supervisor. Such details are prescribed that, if followed, these lists would be exactly alike in form.— See *Code of 1873,* p. 169.

From the passage of the first law requiring the report of delinquent road taxes on non-resident lands until 1861 the township clerk was responsible to the county judge; then to the clerk of the board of supervisors, which the county clerk became after January 1, 1861; and finally to the county auditor when that office was created in 1868.

[127] *Laws of Iowa,* 1884, p. 219.

[128] *Laws of Iowa,* 1902, p. 31.

[129] *Laws of Iowa,* 1909, p. 91.

[130] *Laws of Iowa,* 1911, p. 68.

[131] *Code of Iowa,* 1851, p. 144; *Revision of 1860,* p. 258; *Code of 1873,* p. 271; *Code of 1897,* p. 807. Local laws were formerly distributed by and returned to the township clerk; and such property was in his care when not in use. Later he was authorized to receive a copy of the Code from the county auditor.— *Laws of Iowa,* 1870, p. 88; *Laws of Iowa,* 1874, p. 12.

[132] *Laws of Iowa,* 1870, p. 25; *Code of 1873,* p. 267.

[133] *Code of 1851*, p. 141; *Code of 1897*, pp. 814, 815.

[134] *Code of 1873*, p. 222; *Laws of Iowa*, 1884, pp. 200–202; *Code of 1897*, p. 678.

The law of 1888 did not change the duties of the clerk in such cases of appeal.— *Laws of Iowa*, 1888, p. 134.

[135] *Laws of Iowa*, 1909, pp. 108, 113.

[136] *Laws of Iowa*, 1858, p. 332.

[137] *Laws of Iowa*, 1866, p. 148.

A statute of 1870 reads:

"In township offices by the trustees; but where the offices of the three trustees are vacant the clerk shall appoint, and, if the offices of the three trustees and the clerk are all vacant, then the county auditor shall appoint." — *Laws of Iowa*, 1870, p. 48.

The resignation of all township officers is filed with the county auditor.

[138] *Laws of Iowa*, 1876, pp. 41, 120.

No statute appears to define clearly when the clerk began to act as township treasurer. The *Code of 1851* does not provide for a treasurer; and the early legislation relating to roads and highways places all funds under the direction of the clerk.

[139] *Laws of Iowa*, 1894, p. 66; *Laws of Iowa*, 1896, p. 33; *Code of 1897*, p. 859.

[140] *Laws of Iowa*, 1900, p. 9.

[141] *Laws of Iowa*, 1839–1840, pp. 108, 109.

[142] *Laws of Iowa*, 1846–1847, pp. 128, 129.

[143] *Laws of Iowa*, 1848–1849, p. 101. The duties relative to schools heretofore performed by the township clerk were now assigned to the clerk of the school district.

[144] *Revision of 1860*, pp. 361, 362, 367, 370. In townships where it might be incompatible with the provisions of the laws for the township clerk to act as secretary, the school board was authorized to appoint one from the district at large.— *Revision of 1860*, p. 370.

[145] *Laws of Iowa*, 1862, p. 208. The board of directors was required to elect a secretary from the township at large unless there were at least five sub-directors. In that event all the officers might be selected from the membership.

[146] *Laws of Iowa*, 1866, p. 113; *Laws of Iowa*, 1880, p. 145; *Laws of Iowa*, 1892, p. 86. With reference to the clerk the last act cited reads: "the clerk of the district township".

[147] *Laws of Iowa,* 1904, pp. 103, 104.

[148] *Laws of Iowa,* 1896, pp. 34, 35.

[149] *Laws of Iowa,* 1911, p. 141.

[150] *Laws of Iowa,* 1846–1847, p. 130; *Code of 1851,* p. 347; *Laws of Iowa,* 1858, pp. 339, 340; *Revision of 1860,* p. 145; *Laws of Iowa,* 1862, p. 99; *Code of 1873,* p. 592; *Laws of Iowa,* 1876, p. 50; *Code of 1897,* pp. 266, 267, 570, 572, 815; *Laws of Iowa,* 1906, p. 39; *Laws of Iowa,* 1907, p. 19; *Laws of Iowa,* 1909, pp. 34, 64.

[151] Chase's *Statutes of Ohio,* Vol. I, p. 169. This was a law adopted from the statutes of Pennsylvania.

The assessors of the several townships or a majority of them, acting in conjunction with three commissioners appointed by the county court, were empowered to determine the necessary levy and assess the tax when the property had been listed by the constable of the township and the list returned to them.— Chase's *Statutes of Ohio,* Vol. I, p. 170.

[152] Chase's *Statutes of Ohio,* Vol. I, p. 345.

[153] *Laws of the Territory of Michigan,* Vol. II, p. 317.

[154] *Laws of the Territory of Michigan,* Vol. III, p. 1150.

[155] *Laws of the Territory of Wisconsin,* 1836–1838, p. 64.

[156] *Laws of the Territory of Wisconsin,* 1836–1838, p. 385. An order of the county commissioners of Cedar County in April, 1838, made under this statute, reads as follows:

"You are hereby commanded by the authority of the Board of Commissioners to take an assessment of all property in this county, and in all the counties attached to this for judicial purposes, on the *ad valorem* system, naming the different kinds of property possessed by the individual".

The property is here enumerated, and the assessor is further commanded "to make due return thereon on or before the Thursday next preceding the fourth Monday of next May, to the Commissioners in the County."— Aurner's *A Topical History of Cedar County, Iowa,* 1910, p. 54.

[157] See *Record of Supervisors,* Lee County, Session of April, 1837, Book I, in the office of the County Auditor, Fort Madison, Iowa.

[158] See *Record of Supervisors* [Commissioners], Lee County, Session of September, 1838, Book I, in the office of County Auditor, Fort Madison, Iowa.

[159] See *Records of County Commissioners,* Scott County, Session of May 3, 1838, Book A, in the office of County Auditor, Davenport, Iowa. This session was held in Rockingham, then the seat of justice for Scott County.

At the July, 1838, session of the board Ira Cook presented his assessment roll for Scott and Clinton counties.

160 *Laws of the Territory of Iowa,* 1838–1839, p. 401.

161 *Revised Statutes of the Territory of Iowa,* 1842–1843, p. 546. Section 7 of this act appears to prepare the way for an easy adjustment of real estate values by the township assessor. The reference to town lots is suggestive of the numerous plats of prospective towns that never materialized.

162 *Laws of the Territory of Iowa,* 1843–1844, pp. 28, 32.

163 *Laws of the Territory of Iowa,* 1844–1845, p. 22.

164 *Laws of Iowa,* 1846–1847, p. 136. The county assessor was permitted to appoint a deputy for whose acts he was held responsible.

165 *Laws of Iowa,* 1852–1853, p. 122.

In his second biennial message (1854) Governor Hempstead referred to the change from the county to the township assessor as follows:

"This system, as I have been informed, has proven much more expensive than the former one, and leads to error and inequalities which have been injurious to the public revenue, and unjust to individuals."— Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. I, p. 451.

Governor Grimes in his first biennial message (1856) said:

"Many townships and some counties are returned without any statistics, save those in relation to population. Such will always be the case so long as the census shall be taken by township assessors, instead of being taken by marshals, to be appointed by the Census Board."— Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. II, p. 23.

166 *Laws of Iowa,* 1856–1857, p. 193. The county judge came into office in August, 1851, and was superseded by the county supervisors on January 1, 1861.

167 *Laws of Iowa,* 1858, pp. 311–315.

After the passage of the law of 1858 Governor Grimes in his second biennial message declared:

"It is much doubted whether the law of last session, substituting county for township assessor, was any improvement upon the former method of assessment. Judging from my own observation, I do not hesitate to conclude, that many millions of dollars worth of property was overlooked at the last assessment, and is this year untaxed. I recommend the old law, in this particular, to be restored. Sound policy requires that administration as well as legislation should be brought as directly home to the people as possible." — Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. II, pp. 43, 44.

[168] *Laws of Iowa,* 1843–1844, p. 48.

Again, in 1846, the county assessor was required to prepare a census of his own county and of unorganized adjoining counties. A complete census of that year for Johnson County, showing the heads of families, the number of members of such families, male and female, over twenty-one years and under twenty-one years, as well as the totals, is available. Moreover, the population of the county outside of Iowa City and of the city itself is listed separately. Here, then, are found the names of all males not subordinate to the head of a family.— See *Census of 1846,* in the office of the County Auditor, Iowa City, Iowa.

[169] *Laws of Iowa,* 1858, p. 261. If the assessor failed to perform the duty required by this act, no penalty was provided; but the county court (the county jndge) was authorized to appoint some suitable person to take the census at the expense of the county.

[170] *Laws of Iowa,* 1861 (Extra Session), p. 21.

[171] *Laws of Iowa,* 1864, p. 99.

The office of county auditor was created by an act approved on April 7, 1868.

[172] *Laws of Iowa,* 1866, p. 85. A home for soldiers' orphans was provided for by this act.

[173] *Laws of Iowa,* 1884, p. 172. This information was desirable in the preparation of a roster of Iowa soldiers and sailors.

It was at this time that the assessor was required to list dogs, without attempting a valuation.— *Laws of Iowa,* 1884, p. 77.

[174] *Laws of Iowa,* 1911, p. 44. The attempt to preserve a record of vital statistics required the assessor to report all births and deaths within his township to the clerk of the district court.— *Code of 1897,* p. 889; *Laws of Iowa,* 1906, p. 77; *Laws of Iowa,* 1907, p. 134.

[175] *Laws of Iowa,* 1868, p. 242. The boards of registry were composed of officers having independent duties, meeting for that purpose in townships or towns.

[176] *Laws of Iowa,* 1909, p. 79. Formerly the information required in this act was obtainable through private means or was requested from officers who were not directly concerned.

[177] *Laws of Iowa,* 1862, p. 224. The assessor was instructed to note the road district and subdistrict in which "each piece or parcel" of property was situated.

[178] *Laws of Iowa* (Public), 1872, p. 75.

179 *Laws of Iowa,* 1876, p. 4. See also *Laws of Iowa,* 1880, p. 195; and *Laws of Iowa,* 1884, p. 83.

180 *Laws of Iowa,* 1882, p. 105.

181 *Laws of Iowa,* 1866, p. 55.

182 *Laws of Iowa* (Public), 1872, pp. 48, 49.
No description of tracts of less than forty acres would be available unless surveys had been completed and recorded. Some other description was necessarily used previous to such survey. See *Revision of 1860,* p. 133.

183 *Laws of Iowa,* 1868, p. 127; *Laws of Iowa,* 1906, p. 36.

184 *Laws of Iowa,* 1892, p. 84; *Code of 1897,* p. 483.

185 *Laws of Iowa,* 1904, p. 7.

186 *Laws of Iowa,* 1909, p. 78.

187 *Laws of Iowa,* 1870, p. 94; *Code of 1897,* pp. 485, 486.

188 *Code of 1897,* pp. 267, 476, 479.

189 *Laws of Iowa,* 1894, pp. 63, 66; *Laws of Iowa,* 1902, p. 60.
Any three citizens may procure the listing of such places as are named in the law should the assessor fail to perform this duty. Their action, moreover, the statute declares, shall have "the same force and effect as if done by the assessor."— *Laws of Iowa,* 1894, p. 64.

190 *Laws of the Territory of Iowa,* 1843–1844, p. 30.

191 *Laws of Iowa,* 1846–1847, p. 138.

192 *Code of 1851,* p. 78.

193 *Laws of Iowa,* 1858, p. 308.

194 *Laws of Iowa,* 1866, p. 115.
The State Bank with its branches was established in 1858, and its property was taxed as other property belonging to individuals.— *Laws of Iowa,* 1858, p. 142. See also Brindley's *History of Taxation in Iowa,* Vol. I, p. 147.

195 *Laws of Iowa,* 1862, p. 227. For a discussion of this subject see Brindley's *History of Taxation in Iowa,* Vol. II, Ch. XVI.

196 *Laws of Iowa,* 1868, p. 265. See also Brindley's *History of Taxation in Iowa,* Vol. I, p. 201.

197 *Laws of Iowa,* 1878, p. 53.

198 *Laws of Iowa,* 1896, p. 40. See also Brindley's *History of Taxation in Iowa,* Vol. I, p. 181.

[199] *Laws of the Territory of Iowa,* 1843–1844, p. 28; *Revision of 1860,* p. 113; *Laws of Iowa,* 1861 (Extra Session), p. 24; *Code of 1873,* p. 592; *Code of 1897,* p. 267; *Laws of Iowa,* 1909, p. 35.

[200] See *Revision of 1860,* p. 113; *Code of 1873,* p. 139; and *Code of 1897,* p. 478.

[201] *Laws of the Territory of Michigan,* Vol. II, p. 317.

[202] *Laws of the Territory of Michigan,* Vol. II, p. 612.

[203] *Laws of the Territory of Michigan,* Vol. III, pp. 1150–1154.

[204] *Laws of the Territory of Michigan,* Vol. III, pp. 1108, 1109.

[205] *Proceedings of the Board of Supervisors of Dubuque County,* Session of Friday, May 13, 1836, Vol. I, unpaged. This volume may be found in the office of the county auditor. The Territorial tax amounted to $280, and this is probably for the year 1836. The treasurer was also charged with the county tax of $1950, and with back taxes which could not have been earlier than for 1835. This was a Territorial tax amounting to $176.

[206] *Laws of the Territory of Wisconsin,* 1836–1838, p. 389.

In Cedar County, Iowa, the taxes delivered to the county sheriff for collection for 1838 amounted to $160.71 for Cedar County and $46.75 for the County of Johnson — then attached to Cedar.— Aurner's *A Topical History of Cedar County, Iowa,* p. 59.

On April 3, 1837, Lee County elected one C. M. Jennings collector for the township which it formed.

[207] *Laws of the Territory of Iowa,* 1838–1839, p. 405.

[208] *Laws of the Territory of Iowa,* 1841–1842, p. 100.

[209] *Laws of the Territory of Iowa,* 1843–1844, p. 33.

[210] *Laws of Iowa,* 1868, p. 176. The supervisors were authorized to revoke any order with reference to such an election at any regular June meeting.

Governor Kirkwood in his second biennial message, while discussing the revenue laws, recommended the stimulating of collections by allowing a per cent to county treasurers or by providing for "township collectors, to be paid in the same way", which in his opinion would cause the taxes to be more punctually paid.— Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. II, pp. 321, 322.

[211] *Code of 1873,* p. 68; *Laws of Iowa,* 1884, p. 209.

[212] Chase's *Statutes of Ohio,* Vol. I, pp. 533, 665.

[213] Chase's *Statutes of Ohio,* Vol. III, p. 1895.

[214] *Laws of the Territory of Michigan*, Vol. II, p. 727.

[215] *Laws of the Territory of Iowa*, 1841–1842, p. 99.

[216] *Laws of Iowa*, 1852–1853, p. 81.

There appears to be no definite legislation relative to the office of township treasurer after 1842.

[217] Chase's *Statutes of Ohio*, Vol. I, pp. 92, 94; Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. II, p. 3. In the 18th century the justice of the peace in England occupied the most important position among the local officers. He had been given most of the power of the sheriff, had gained control of the parish administration in connection with ecclesiastical organizations, and in the courts of quarter sessions he acted as the county administrative authority. That is to say, he became both an administrative and judicial officer, and had under his direction almost all other officers of the locality.— Goodnow's *Principles of Administrative Law of the United States*, p. 180.

[218] "Court convened according to adjournment."— *Proceedings of Commissioners of Cedar County*, August 13, 1838. See Aurner's *A Topical History of Cedar County*, 1910, p. 56.

[219] Chase's *Statutes of Ohio*, Vol. I, p. 371.

[220] Chase's *Statutes of Ohio*, Vol. I, pp. 394, 506, 641, 662; Vol. II, pp. 1048, 1084; and Vol. III, p. 1569.

[221] *Laws of the Territory of Michigan*, Vol. II, p. 317; Vol. III, p. 1038; *Laws of the Territory of Wisconsin*, 1836–1838, p. 177.

[222] *Laws of the Territory of Michigan*, Vol. III, p. 1074.

By the laws of Michigan, enacted by the Governor and Judges in 1816, some of the powers and duties of the justices were to "apprehend for escapes", celebrate the right of matrimony, take acknowledgment and proof of deeds and other writings, "hear and determine complaints between masters and apprentices or servants, and disputes relating to indentures, contracts and wages, and controversies between inhabitants and Indians." They were authorized also to "bind out unprotected minors". The law thus enacted was drawn from the statutes of seven States: Connecticut, Massachusetts, Maryland, New York, Ohio, Pennsylvania, and Vermont.— *Laws of the Territory of Michigan*, Vol. I, p. 189.

[223] *Laws of the Territory of Wisconsin*, 1836–1838, pp. 309, 310. One of the first acts of the commissioners of Cedar County (Iowa), Wisconsin Territory, was to receive the bonds of the justices of the peace appointed by Governor Henry Dodge. These were Henry Hardman, John Blalock, and George McCoy. The bonds mentioned were turned over by Robert G. Roberts,

who had been a justice of the peace in Dubuque County before its subdivision. This occurred in April, 1838.— Aurner's *A Topical History of Cedar County,* 1910, p. 53.

224 *Laws of the Territory of Wisconsin,* 1836–1838, pp. 312, 313.

225 *Laws of the Territory of Iowa,* 1838–1839, p. 282.

226 *Laws of the Territory of Iowa,* 1839–1840, p. 59.

Governor Lucas, in his second annual message, recommended the election of justices in the townships.— *House Journal,* 1839–1840, pp. 11, 12.

E. A. Gray and A. G. Smith were elected justices of the peace in Iowa Township, Cedar County, in 1840.

227 *Revision of 1842–1843,* pp. 309, 311, 312.

228 *Laws of the Territory of Iowa,* 1843–1844, p. 40.

In 1845, upon the organization of Iowa County, in the provision for the election of officers it is specifically stated that the number of justices and constables shall be in accordance with the opinion of the officer ordering the election, who should have "due regard to the convenience of the people". In this case the officer referred to was either the clerk of the district court of Johnson County or the sheriff of the same county should there be no lawful clerk. As attached to Johnson County, Iowa County was a precinct, and in such instances the justices therein then in office were required to surrender all papers and documents to the nearest one chosen at the first election held within the recently organized county.— *Laws of the Territory of Iowa,* 1845, p. 85.

229 *Code of 1851,* pp. 43, 44.

230 *Code of 1851,* pp. 57, 269.

231 *Laws of Iowa,* 1852–1853, p. 128.

232 *Code of 1851,* p. 310; *Code of 1873,* p. 552.

233 *Laws of Iowa,* 1884, p. 203.

234 *Laws of Iowa,* 1911, p. 68.

235 *Laws of Iowa,* 1894, p. 77.

236 *Laws of Iowa,* 1907, pp. 170, 171.

237 Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. II, p. 14.

238 Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. II, p. 79; and Chase's *Statutes of Ohio,* Vol. I, p. 239.

239 *Laws of the Territory of Michigan,* Vol. I, p. 220.

[240] *Laws of the Territory of Michigan,* Vol. I, p. 669.

[241] *Laws of the Territory of Michigan,* Vol. I, pp. 683, 685; Vol. II, p. 130.

[242] *Laws of the Territory of Michigan,* Vol. II, pp. 279, 281.

[243] *Laws of the Territory of Michigan,* Vol. II, p. 317.

[244] *Laws of the Territory of Wisconsin,* 1836–1838, p. 176. In Lee County thirteen constables were elected on April 3, 1837.

[245] *Laws of the Territory of Iowa,* 1838–1839, p. 71.

[246] *Laws of the Territory of Iowa,* 1839–1840, p. 47.

The constable was not only the ministerial officer of the justice of the peace but also of the coroner.— *Laws of the Territory of Iowa,* 1839–1840, p. 12.

[247] *Laws of the Territory of Iowa,* 1841–1842, p. 100.

In the town meeting, wherever it has been a feature of local government, the constable has been required by law to execute the orders either of the electors or of the chairman.

[248] *Laws of the Territory of Iowa,* 1843–1844, p. 2.

[249] *Laws of the Territory of Iowa,* 1843–1844, p. 41.

[250] *Laws of the Territory of Iowa,* 1845–1846, p. 11.

[251] *Code of 1851,* pp. 40, 41. A constable could neither act as attorney or counsel for any person in any court nor become the purchaser of property exposed by him for sale under due process of law.— *Code of 1851,* p. 33.

[252] *Code of 1851,* pp. 321, 322. "The powers and duties of the sheriff in relation to the business of the district court, so far as the same are applicable and not modified by statute, devolve upon the constable in relation to the justice's court."

[253] *Code of 1851,* p. 344.

[254] *Laws of Iowa,* 1852–1853, p. 46.

[255] *Laws of Iowa,* 1894, p. 77; *Laws of Iowa,* 1907, pp. 170, 171; *Laws of Iowa,* 1909, p. 192.

[256] Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. II, p. 76.

In 1795 a law adopted from the Pennsylvania code by the Governor and Judges of the Territory of the Northwest provided that each court of general quarter sessions should appoint for each county "so many honest and able men as they shall think fit" to view all fences about which "any dif-

ference may happen or arise''. They became the sole judges of the damages that might be caused or of the sufficiency of fences.— Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. II, p. 64.

257 *Laws of the Territory of Michigan,* Vol. II, pp. 317, 323.

''Fence viewers, under a variety of names, appear as elective officers in all the New England town and colonial records.'' These terms are illustrated by ''haywards'', ''cow-keepers'', or ''field drivers''. In the western States the duties of the fence viewers were soon given to other officers. In a recent Nebraska statute each party to the controversy might select a viewer and in case of refusal both might be chosen by one of the parties, these two to select a third in case of disagreement.— Howard's *Local Constitutional History of the United States,* pp. 221, 224, 225.

258 *Laws of the Territory of Michigan,* Vol. III, pp. 1046–1048. Anyone taking up an animal on account of damage must report the act to two of the nearest fence viewers within twenty-four hours, Sundays excepted. If damages were not duly paid by the owner in the sum named by the fence viewers, the animal was ''impounded''. A pound master or pound keeper was among the township officers provided for in the laws of Michigan but this ancient office has never been established in the Territory or State of Iowa.

259 *Laws of the Territory of Iowa,* 1839–1840, p. 48. The laws of Wisconsin made no change in the functions of these officers during the period noted.

260 *Laws of the Territory of Iowa,* 1841–1842, p. 98. Four fence viewers were reported as elected in Des Moines County in 1841 in accordance with the first statute providing for township organization. Election returns from the nine townships were probably incomplete.

261 *Laws of the Territory of Iowa,* 1841–1842, p. 12.

262 *Laws of the Territory of Iowa,* 1843–1844, p. 22.

263 *Laws of the Territory of Iowa,* 1845, p. 28. In accordance with the special act of the General Assembly in 1848, the settlers in Lake Prairie Township, Marion County, elected fence viewers as provided in the law of 1842.— See H. P. Scholte's *Tweede Stem uit Pella,* p. 10.

By the law of 1845 township trustees were constituted acting fence viewers. The act of 1848 relating to Lake Prairie Township required the fence viewers to qualify under the general laws, although it appears that there were none to cover the case.— *Laws of Iowa,* 1848 (Extra Session), p. 16.

264 *Laws of the Territory of Michigan,* Vol. II, p. 317.

265 *Laws of the Territory of Michigan,* Vol. III, pp. 1045, 1151.

The supervisor of the township as here described was a member of the county board, since he was required to attend the annual meeting of that body, as well as every "adjourned or special meeting".

266 *Laws of Michigan and Wisconsin,* 1834–1836, Appendix, p. 1.

267 *Laws of the Territory of Wisconsin,* 1836–1838, pp. 138, 176.

The county records in the organized counties formed from subdivisions of the counties of Dubuque and Demoine indicate the change from supervisors to commissioners in April, 1838 — the law having been passed in December, 1837.

268 *Revision of 1860,* p. 48.

269 *Laws of Iowa,* 1870, p. 186.

At no time in the history of Iowa has there been a single supervisor for the township who performed the functions of that office as known in Michigan or Wisconsin when the Iowa country was under those jurisdictions. This might have occurred had the law not provided that when counties comprised a single township three supervisors should be elected. It is recorded that Lee County elected three such supervisors on April 3, 1837.— *Records of Supervisors,* Lee County, Book I, p. 1.

270 *Laws of the Territory of Michigan,* Vol. II, p. 689.

271 *Laws of the Territory of Michigan,* Vol. III, p. 848.

272 *Laws of the Territory of Michigan,* Vol. III, pp. 1172, 1173. It may be noted that the authority granted to the township board meant really the control and regulation of the liquor traffic.

273 *Laws of Michigan and Wisconsin,* 1834–1836, Appendix, p. 5.

274 *Laws of the Territory of Wisconsin,* 1836–1838, p. 113.

The supervisors of each county in the original Territory of Wisconsin were authorized to grant licenses for not less than one year for "groceries, victualing houses, and ordinaries, with permission to sell spirituous liquors and wine by small measure, under such regulations and restrictions as they, or a majority of them, may deem expedient".

275 Chase's *Statutes of Ohio,* Vol. I, p. 120.

276 Chase's *Statutes of Ohio,* Vol. I, pp. 260, 265, 523.

277 *Laws of the Territory of Michigan,* Vol. I, p. 77.

278 *Laws of the Territory of Michigan,* Vol. IV, p. 43.

279 *Laws of the Territory of Michigan,* Vol. II, p. 118.

280 *Laws of the Territory of Michigan,* Vol. I, p. 669.

[281] *Laws of the Territory of Michigan,* Vol. II, pp. 495, 496.

[282] *Laws of the Territory of Michigan,* Vol. II, pp. 321, 503; Vol. III, p. 1049.

In each township in Michigan the commissioners of highways were required to erect guide-posts having proper devices at the intersection of all post-roads in the Territory and at such by-roads as they might consider necessary leading to or from any township, village, or landing. After these were erected it was the duty of the overseers of the highways to keep in repair all guide-posts within the limits of their districts.— *Laws of the Territory of Michigan,* Vol. III, p. 1058.

The supervisor of the road district in the original Territory of Wisconsin was required to erect "at the forks of every road or highway within his district" a guide-post containing a legible inscription and showing the direction and distance to "the most remarkable place" on each road.— *Laws of the Territory of Wisconsin,* 1836–1838, p. 271.

A statute of Pennsylvania (1836) required the road supervisors to erect an "index board" at the intersection of all public roads within their townships. Upon these there should be inscribed the places to which these roads led and the "distance thereto computed in miles".— *Laws of Pennsylvania,* 1700–1846, p. 646.

[283] *Laws of the Territory of Wisconsin,* 1836–1838, pp. 264, 265, 267.

[284] *Laws of the Territory of Iowa,* 1839–1840, p. 115. In the opinion of Governor Lucas, township organization was desirable to insure a well regulated system of public roads.

It is a matter of record that the chief business of the county commissioners of the Territory or State of Iowa during their existence as a governing body had to do with the establishment of roads and ferries.

In July, 1838, the county commissioners divided Cedar County into eight districts and appointed a supervisor for each. Johnson County was at first formed into only four districts.

[285] *Laws of the Territory of Iowa,* 1841–1842, p. 100.

The number of supervisors in any township at the first election was fixed at four — which was subject to change according to the opinion of the trustees. In nine townships of Des Moines County eleven supervisors were reported as elected in April, 1841.

[286] *Laws of the Territory of Iowa,* 1841–1842, p. 69.

On August 13, 1838, the commissioners of Cedar County levied a tax of five mills for county purposes and "one cent on a dollar for road purposes" — which was the limit under Wisconsin laws.— *Laws of the Territory of Wisconsin,* 1836–1838, pp. 269, 385.

On April 1, 1839, David W. Walton, supervisor of the Centerville district,

Cedar County, reported to the county commissioners that all taxes "on personal liability and for signing petitions" in his district, with two exceptions, were paid.— Aurner's *A Topical History of Cedar County*, 1910, p. 59.

287 *Laws of the Territory of Iowa*, 1845, p. 47.

It required a petition from at least six freeholders residing within two miles of a proposed township road in order to secure the appointment of viewers. The petitioners must also enter into bonds for the costs of view and survey.— *Laws of the Territory of Iowa*, 1845, p. 28.

288 *Code of 1851*, pp. 96, 100. The Census Board was composed of the Governor, Auditor, Secretary, and Treasurer of the State, or any three of them.

289 *Laws of Iowa*, 1852–1853, pp. 79–83.

In his second biennial message Governor Hempstead made recommendations as follows:

"In this connection permit me to speak of the common roads of our State, and to urge upon you the necessity of again reinstating the law which required the election of a County Supervisor. That officer had the charge and supervision of all the roads in the county. Then there was uniformity in the opening and the work done upon them — now in some townships the roads are kept in order, and in others nothing is done; and the consequence is, that there is no system or regularity upon a subject which is of the greatest importance and interest to every inhabitant of the State."— Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, p. 463.

290 *Laws of Iowa*, 1854–1855, p. 218.

Until 1858 the election of township officers occurred in April, and thereafter at the general election in October, except in presidential years.

291 *Laws of Iowa*, 1858, pp. 331–339.

292 *Laws of Iowa*, 1862, pp. 107, 192.

In his message to the General Assembly in the special session of 1862, Governor Kirkwood recommended that the law be so amended that "all able bodied male residents of the State between the ages of eighteen and sixty be made liable to perform labor on our highways." This he regarded as necessary since a large number of the men were then in the military service. — Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 314.

293 *Laws of Iowa*, 1864, p. 82.

294 *Laws of Iowa*, 1868, p. 138. This amendment retained the requirement of two days labor from "all the able-bodied male residents" of the

district between the ages of twenty-one and fifty, in harmony with the recommendation of Governor Kirkwood, which was submitted in 1862.

[295] *Code of 1873*, p. 168.

Governor Merrill in his second biennial message declared it as his opinion that the returns in proportion to the outlay for the repair of roads were very small, and he recommended the "abolition of the existing road-districts, with township supervision under an officer selected for the purpose".— Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, p. 377.

The first message of Governor Carpenter submitted in 1874 contained the following suggestions: "whether it would not be well to make each road-district independent, and provide that the people may come together and levy a tax to build highways as the law provides they may do to build school-houses." This he said was "the practice in some States, and the result proves its wisdom."— Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. IV, p. 99.

[296] *Laws of Iowa*, 1880, p. 129.

Governor Gear (1882) declared that the system of working roads "by a headless and almost aimless army of over ten thousand supervisors" was "radically unsound". He recommended the payment of all taxes in money and "the consolidation and systematization" of such work under the proper management.— Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. V, p. 169.

[297] *Laws of Iowa*, 1884, pp. 218, 219. Governor Sherman recommended in his first message (1884) that road taxes be paid in money. He believed it would be more efficiently expended under the direction of a competent supervisor or "one roadmaster in the township, who should be held responsible for the roads therein, and that he be appointed by the trustees, and accountable to them for his official action."— Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. V, p. 309.

In referring to this law of 1884 Governor Larrabee in 1890 said: "It is believed that very few townships have availed themselves of this provision. . . . The requirement that a majority of the voters must petition for the system practically prevents its adoption. It would be better to authorize the trustees to submit the question of the adoption of the system to the people of the township".— Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, p. 171.

In 1897, the statutes provided for three years' trial before permitting a return to the single road-district plan.— *Code of 1897*, p. 571.

[298] *Laws of Iowa*, 1898, p. 29.

[299] *Laws of Iowa*, 1902, pp. 30, 32. The meaning of the term "road

supervisor'' after the passage of this act was to be interpreted as ''superintendent or contractor''.

[300] *Laws of Iowa,* 1906, pp. 38, 40.

It was during this session of the General Assembly that provision was made for the transfer of ''township hall'' funds to the road fund; and also the provision for the remission of a part of the road tax when the person liable for it used wide tires upon the township highways.— *Laws of Iowa,* 1906, pp. 14, 41.

[301] *Laws of Iowa,* 1909, p. 92.

The statute requiring road supervisors or superintendents to erect guide-boards was amended in 1909 in as much as the substitution of the word ''may'' for ''shall'' might affect it.— *Laws of Iowa,* 1909, p. 91.

Governor Sherman said in 1884 that he must call the attention of the members of the General Assembly ''to the fact that the law requiring supervisors to place proper guide-boards at highway crossings, is not enforced, save in a very few road districts, throughout the entire State. Travelers complain thereat. Would it not be well to affix a penalty to all supervisors who fail to promptly obey this reasonable requirement?''— Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. V, p. 309.

[302] *Laws of Iowa,* 1911, p. 65.

[303] *Laws of Iowa,* 1909, p. 90.

[304] Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. II, p. 15.

[305] Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. II, pp. 60, 62.

[306] *Laws of the Territory of Michigan,* Vol. I, p. 531.

[307] *Laws of the Territory of Michigan,* Vol. II, pp. 595, 596.

[308] *Laws of the Territory of Michigan,* Vol. II, pp. 727–730.

[309] *Laws of the Territory of Michigan,* Vol. III, p. 868.

[310] *Laws of the Territory of Michigan,* Vol. III, p. 1038.

An interesting application of the Michigan statute of 1833 which was retained in the original Territory of Wisconsin is found in the records of Lee County. In 1837 it appears that E. D. Ayers and J. S. Douglass were elected directors of the poor. At the same time E. D. Ayers was elected one of the three county commissioners of highways, and he had been formerly a member of the first board of supervisors of Demoine County upon its organization under Michigan law in 1835.— *Records of County Supervisors,*

Lee County, Book I, p. 1; *Records of County Supervisors,* Demoine County, Session of September, 1835, Book I.

311 *Laws of Wisconsin,* 1836–1838, p. 178.

The county commissioners of Cedar County made the following entry on July 7, 1838:

"Received notification that the family of Matthew Turner were in a suffering condition and agreed to meet at his house tomorrow morning at 9 o'clock to make provision for his relief."

This was done under Wisconsin law.— *Records of County Commissioners,* Session of July 7, 1838.

312 *Laws of the Territory of Iowa,* 1839–1840, p. 48. The trustees were to settle accounts with the overseers.

313 *Laws of the Territory of Iowa,* 1839–1840, p. 83. It is not indicated in the act that the county commissioners were to supersede the overseers of the poor, but they became the final authority and supervised all of the overseers in township poor relief.

314 *Laws of the Territory of Iowa,* 1841–1842, pp. 58, 83.

The question of "legal residence" was one always to be settled in the granting of poor relief. By this act, approved on February 16, 1842, any person who had resided in the township for one year without being warned by the overseers to leave, or having been "once so warned" and not warned a second time within three years "shall be considered as having gained a legal residence in such township".

315 *Laws of the Territory of Iowa,* 1843–1844, p. 18.

316 *Laws of the Territory of Iowa,* 1845, p. 28.

317 *Laws of Iowa,* 1846–1847, p. 182; *Laws of Iowa,* 1848–1849, p. 62. The "County Commissioners' Court" is named in this law as the authority to make the purchase.

318 *Laws of Iowa,* 1850–1851, p. 77. The farm purchased in Lee County included one hundred and thirty acres. The General Assembly in 1855 authorized, by a special act, the sale of this farm and the purchase of another.

319 *Code of 1851,* pp. 126, 129, 130, 131.

320 *Revision of 1860,* p. 51.

321 *Laws of Iowa,* 1868, p. 131.

322 *Laws of Iowa,* 1876, p. 21.

323 *Laws of Iowa,* 1880, p. 128.

[324] *Laws of Iowa*, 1888, p. 137.

[325] *Code of 1897*, pp. 263, 783.

[326] Shaw's *Local Government in Illinois* in *Johns Hopkins University Studies*, Vol. I, No. 3, p. 10.

[327] Bemis's *Local Government in Michigan and the Northwest* in *Johns Hopkins University Studies*, Vol. I, No. 5, p. 11. "From that time [1825] until the present [1883], the powers of the township have slowly but continuously increased."

[328] Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. III, pp. 267–271.

[329] Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. III, p. 310.

[330] See note 226 above.

[331] 132 Iowa 533; 52 Iowa 132; *Laws of Iowa*, 1902, p. 68.

[332] 39 Iowa 333.

[333] 57 Iowa 72.

[334] 71 Iowa 478.

[335] *Constitution of Iowa*, Art. XI, Sec. 3; 58 Iowa 384; 82 Iowa 292; 81 Iowa 482.

[336] 52 Iowa 81.

[337] 59 Iowa 376.

[338] 24 Iowa 342.

[339] 34 Iowa 309; 61 Iowa 624.

[340] *Code of 1873*, p. 433; 80 Iowa 89.

[341] See note 59 above.

[342] 42 Iowa 486; *Code of 1873*, p. 64; *Code of 1897*, p. 262.

[343] 46 Iowa 25.

[344] 51 Iowa 107.

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